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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1127

OWEN W. CRUMPACKER,

Petitioner,

vs.

INDIANA SUPREME COURT DISCIPLINARY COMMISSION and SAUL I. RUMAN, COMPLAINANT,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of Indiana

RESPONDENT SAUL I. RUMAN'S APPENDIX IN SUPPORT OF BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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SUPREME COURT OF INDIANA ORDER ADOPTING RULES OF PROCEDURE

IN THE
SUPREME COURT OF INDIANA

IN THE MATTER OF THE
ADOPTION OF
RULES OF THE COURT

WHEREAS, this Court has inherent power to make rules of procedure and also has such power pursuant to the authority granted by the General Assembly of Indiana by Acts of 1937, ch. 91, § 1, p. 459,

AND WHEREAS, this Court received a proposed final draft of new Rules of Civil Procedure in October of 1968 from the Civil Code Study Commission of Indiana,

AND WHEREAS, this Court thereupon referred this proposed final draft of new Rules of Civil Procedure to the Advisory Committee of this Court on Revision of Rules of Procedure and Practice for consideration and study and to receive suggestions from members of the Bar and legal community with reference to the new Proposed Rules,

AND WHEREAS, the Committee of this Court on Revision of Rules of Procedure and Practice did report to this Court that it had completed its study of the new Proposed Rules and recommended that the Court adopt said Rules with some modification,

AND WHEREAS, this Court immediately commenced its own study of the new Proposed Rules which study is now completed,

AND WHEREAS, during the period of study by the Court, the Indiana General Assembly enacted House Enrolled Act 1733 adopting the same new Proposed Rules with modification, said Act to become effective on and after January 1, 1970, which Act contained the following section

recognizing the inherent power of this Court to amend the procedural rules contained in the enactment:

> "SEC. 2. The General Assembly of the State of Indiana affirms the inherent power of the Supreme Court of Indiana to adopt, amend and rescind rules of Court affecting matters of procedure, and the General Assembly reaffirms the power given to the Supreme Court to adopt, amend and rescind rules of Court, including these rules of Court herein adopted, as set forth by the Acts of the General Assembly of 1937 at Chapter 91, Section 1."

AND WHEREAS, this Court has made additional modifications of the procedural rules contained in the said enactment, NOW THEREFORE,

IT IS ORDERED AND DECREED THAT

1. The compilation of procedural rules, appended to this Order, are hereby adopted as the Rules of Procedure of the Indiana Supreme Court, such rules to become effective immediately following midnight of the 31st day of December, 1969; and

2. The current rules of the Supreme Court of Indiana shall remain in effect until midnight on the 31st day of December, 1969, when they shall be abrogated and superceded by the appended rules; and

3. Section 3 of the enactment of the 1969 General Assembly of Indiana, entitled House Enrolled Act No. 1733, is set out herein in full and appended to this Order for use in determining which statutes have been specifically repealed by said enactment, which section this Court does not intend to affect in any manner by this Order; and

4. The rules appended to this Order shall supercede all procedural statutes in conflict therewith.

It is so ordered this 29 day of July, 1969.

ROGER O. DeBRULER
CHIEF JUSTICE

INDIANA RULES FOR ADMISSION TO THE BAR AND THE DISCIPLINE OF ATTORNEYS

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Admission and Discipline Rule 1

THE BAR OF INDIANA

The bar of this state shall consist of all attorneys in good standing who, prior to July 1, 1931, were duly admitted to practice law by the circuit courts of this state, and all attorneys in good standing who, subsequently thereto, have been or hereafter shall be admitted to practice by this court.

Admission and Discipline Rule 23

DISCIPLINARY COMMISSION AND PROCEEDINGS

Section 1. General Principles

Each person granted the privilege to practice law in this State has the obligation to conduct himself at all times in a manner consistent with the trust and confidence reposed in him by this Court and in a manner consistent with his duties and responsibilities as an officer or judge of the courts of this State. This Court has exclusive jurisdiction of all cases in which an attorney who is admitted to the bar of this Court or who practices law in this State (hereinafter referred to as "attorney") is charged with misconduct. The procedures hereinafter set forth shall be employed and construed to protect the public, the court and the members of the bar of this State from misconduct on the part of attorneys and to protect attorneys from unwarranted claims of misconduct.

The term "attorney" as used in this rule shall include, in addition to all persons admitted to the bar of this Court, or who practice law in this State, any and all judges of any and all courts of this State now in existence or hereafter created or established.

Section 2. Grounds for Discipline or Suspension

(a) Any conduct that violates the Code of Professional Responsibility or the Code of Judicial Conduct and Ethics heretofore adopted or as hereafter modified by this Court or any standards or rules of legal and judicial ethics or professional responsibility hereafter adopted by this Court shall constitute grounds for discipline.

(b) If an attorney admitted to practice in this State who is also admitted to practice in any other state should be disbarred or suspended by the proper authority of such other state, such disbarment or suspension shall constitute sufficient grounds for disbarment or suspension of said attorney in this State.

(c) Any attorney who becomes disabled by reason of physical or mental illness or infirmity or because of the use of or addiction to intoxicants or drugs shall be subject to suspension by reason of such disability.

Section 3. Type of Discipline and Suspension

(a) One of the following types of discipline may be imposed upon any attorney found guilty of misconduct: permanent disbarment from the practice of law subject to reinstatement as hereinafter provided; suspension for a definite or an indefinite period from the practice of law subject to reinstatement as hereinafter provided; suspension for a definite period, not to exceed six months, from the practice of law with provision for automatic reinstatement upon such conditions as the Court shall specify in the order of suspension; a public reprimand; or a private reprimand.

(b) Any attorney found disabled by reason of physical or mental illness or infirmity or by use of or addiction to any intoxicants or drugs shall be suspended for the duration of such disability.

(c) In cases of misconduct or disability, this Court may, in lieu of permanent disbarment or suspension place a law-

yer on probation and permit him to continue practicing law if in its opinion such action is appropriate and desirable. In such event, the lawyer will be subject to such conditions, limitations and restrictions as this Court may see fit to impose, and upon a violation of such conditions, restrictions or limitations, said attorney may be suspended or disbarred.

(d) Notice of permanent disbarment, suspension or public reprimand shall be communicated to the parties to the proceeding, the Clerk of this Court, the Clerk of each of the Federal District Courts in this State, the Clerk of the Court and Bar Association of each county in which the attorney maintains an office, the Clerk of the Court and Bar Association of each contiguous county, a newspaper of general circulation in each county in which the attorney maintains an office, the official publication of the Indiana State Bar Association, and the American Bar Association. Notice of private reprimand shall be communicated to the parties to the proceeding and the Clerk of this Court. In cases where probation is imposed by this Court, the Clerk shall notify such persons as the Court may direct of the action taken and of the restriction, conditions or limitations.

Section 4. Reinstatement

(a) No person whose privilege to practice law has been suspended shall be eligible for reinstatement to practice law in this State unless he establishes by clear and convincing evidence before the disciplinary commission of this Court that:

(1) He desires in good faith to obtain restoration of his privilege to practice law;

(2) The term of suspension prescribed in the order of suspension has elapsed or five (5) years have elapsed since the suspension;

(3) He has not practiced law in this State or attempted to do so since he was disciplined;

(4) He has complied fully with the terms of the order for discipline;

(5) His attitude towards the misconduct for which he was disciplined is one of genuine remorse;

(6) His conduct since the discipline was imposed has been exemplary and above reproach;

(7) He has a proper understanding of and attitude towards the standards that are imposed upon members of the bar and will conduct himself in conformity with such standards;

(8) He can safely be recommended to the legal profession, the courts and the public as a person fit to be consulted by others and to represent them and otherwise act in matters of trust and confidence, and in general to aid in the administration of justice as a member of the bar and an officer of the Courts;

(9) The disability has been removed, if the discipline was imposed by reason of physical or mental illness or infirmity, or for use of or addiction to intoxicants or drugs.

(b) Whenever a person is suspended for a definite period not to exceed six (6) months with provision for automatic reinstatement, the commission shall have the right to file written objections to such automatic reinstatement, setting forth its reasons for such objections, which shall be limited to:

1. failure to comply with the terms of the order;
2. pendency of other complaints;
3. failure to comply with the terms of Section 27, infra.

Such objections must be filed with the Court at least ten (10) days prior to the expiration of such period of suspension and a copy of such objections shall be mailed to the suspended attorney. Upon the timely filing of such objections, the Court shall conduct a hearing on such objections and upon the question of reinstatement of such attorney; and the Court, after such hearing, shall determine whether or not such suspended attorney shall be reinstated.

If the Court determines that such attorney should not then be reinstated, the Court shall, in its order, specify when such attorney shall be eligible to apply for reinstatement pursuant to subsection (a) of this section.

Section 5. Role of Bar Association

(a) Bar associations in this State shall not conduct proceedings for the imposition of discipline as defined in this rule. Such bar associations shall take all necessary action to resolve attorney-client disputes which do not involve claims of misconduct upon request by the Disciplinary Commission. Such bar associations and the members of the bar shall also assist the Disciplinary Commission in the investigation and prosecution of claims of misconduct upon request by the Disciplinary Commission.

(b) Bar associations of this State may take reasonable action to resolve attorney-client disputes where the dispute is limited to the amount of compensation being charged by the attorney independently of any request by the Disciplinary Commission and without referring such dispute to the Disciplinary Commission. Such action by the bar associations may include but shall not be limited to mediation or arbitration of the amounts to be charged for an attorneys' services.

In cases where a bar association attempts to resolve an attorney-client dispute as to compensation charged for the attorney's services, any person dissatisfied with such attempt at resolution shall have a right to file a formal complaint with the Disciplinary Commission if the amount charged by the attorney is so completely excessive in relation to the services performed and to the usual considerations taken into account in determining an attorney's charges as to constitute misconduct in itself, or if other misconduct on the part of the attorney is claimed.

(c) A bar association of this State shall be permitted to prepare and file a claim of misconduct with the Disciplinary Commission under the following circumstances:

(1) The decision to prepare and file such claim of misconduct shall be taken at a regular or special meeting of said bar association after notice has been given to the members of such association

or

Where such association has a governing Board of Managers or Board of Directors, such decision may be taken at a regular or special meeting of such Board of Managers or Board of Directors after notice to such managers or directors.

(2) A quorum of the members of such association, or of the Board of Managers or Board of Directors thereof shall be in attendance at the meeting.

(3) The decision to file a claim of misconduct shall be made by a roll call vote of the members, managers or directors in attendance at such meeting, with the vote of each member present being recorded.

Section 6. Composition of Supreme Court Disciplinary Commission

(a) A disciplinary commission to be known as the "Disciplinary Commission of the Supreme Court of Indiana" (hereinafter referred to as "the commission") is hereby created and shall have the powers and duties hereinafter set forth. Five of the members of the commission shall be members of the bar of this State, and the remaining members may be non-lawyers. Said members shall be appointed as follows:

(b) The disciplinary commission shall consist of seven (7) members appointed by the Supreme Court of Indiana. A reasonable effort shall be made to provide a geographical representation of the State. The term of each member shall be for five (5) years. Provided, however, upon the effective date of this rule, two (2) members shall be appointed for a term of two (2) years, two (2) members for a term of three (3) years, two (2) members for a term of four (4) years and one (1) member for a term of five (5)

years. Thereafter, the terms of each new appointee shall be for five (5) years, or in the case of an appointee to fill the vacancy of an unexpired term, until the end of such unexpired term. Any member may be terminated by the Court for a good cause.

Section 7. Organization of the Disciplinary Commission

(a) The Commission shall annually elect from among its membership a Chairman who shall preside at all meetings, a Vice Chairman who shall preside in the absence of the Chairman, and a Secretary who shall keep the minutes of the meetings of the Commission.

(b) Four Commissioners shall constitute a quorum of the Commission and the Commission shall act by a vote of a majority of the Commissioners present.

(c) The Commission shall meet monthly at a time and place designated by the Chairman who may also convene special meetings of the Commission, in his discretion. The members of the Commission should be entitled to a per diem of twenty-five [$25.00] dollars a meeting plus mileage if they live outside Marion County.

Section 8. Powers and Duties of the Disciplinary Commission

In addition to the powers and duties set forth in this Rule, the Commission shall have the power and duty to:

(a) appoint with the approval of the Supreme Court an Executive Secretary of the Commission who shall be a member of the Bar of this State and who shall serve at the pleasure of the Commission;

(b) prepare and furnish a form of request for investigation to each person who claims that an attorney is guilty of misconduct and to each Bar Association in this State for distribution to such persons;

(c) supervise the investigation of claims of misconduct;

(d) issue subpoenas, including subpoenas duces tecum; the failure to obey such subpoena shall be punished as contempt of this Court;

(e) do all things necessary and proper to carry out its powers and duties under these Rules;

(f) the right to bring an action in the Supreme Court to enjoin or restrain the unauthorized practice of law.

Section 9. Powers and Duties of the Executive Secretary

In addition to the powers and duties set forth in this Rule, the Executive Secretary shall have the power and duty to:

(a) administer the Commission's work;

(b) appoint, with the approval of the Commission, such staff as may be necessary to assist the Commission to carry out its powers and duties under this Rule;

(c) supervise and direct the work of the Commission's staff;

(d) appoint and assign duties to investigators;

(e) supervise the maintenance of the Commission's records;

(f) issue subpoenas in the name of the Commission, including subpoenas duces tecum. The failure to obey such a subpoena shall be punished as a contempt of this Court;

(g) enforce the collection of the registration fee provided in Section 15 against delinquent members of the Bar; and

(h) do all things necessary and proper to carry out his duties and powers under this Rule.

Section 10. Investigatory Procedures

(a) Upon receipt of a written, verified claim of misconduct (hereinafter referred to as "the grievance"), from a

member of the public, a member of this bar, a member of the commission, or a Bar Association and completion of such preliminary investigation as he deems appropriate, the Executive Secretary shall:

(1) Dismiss the claim, with the approval of the commission, if he determines that it raises no substantial question of misconduct; or

(2) If he determines that it does raise a substantial question of misconduct, send a copy of the grievance by certified mail to the attorney against whom the grievance is filed (hereinafter referred to as "the respondent") and shall request a written response within twenty (20) days after the respondent receives a copy of the grievance. In the event of a dismissal as provided herein, the person filing the grievance and the respondent shall be given written notice of the Executive Secretary's determination. In the event of a determination that a substantial question exists, the matter shall proceed to (b) hereinafter.

(b) Thereafter, after notice to the respondent, if the Executive Secretary, upon consideration of the grievance, the preliminary investigation and any response from the respondent, determines there is a reasonable cause to believe that the respondent is guilty of misconduct the grievance shall be docketed and investigated. If he determines that no such reasonable cause exists, the grievance shall be dismissed with the approval of the commission. In either event, the person filing the grievance (hereinafter referred to as "the complainant") and the respondent shall be given written notice of the Executive Secretary's determination.

(c) If the grievance is docketed, for investigation, the Executive Secretary shall conduct an investigation of the grievance. Upon completion of the investigation the Executive Secretary shall promptly make a report of the investigation and his recommendations to the commission at its next meeting.

(d) In conducting an investigation of any grievance, or in considering the same, the Executive Secretary or the

commission shall not be limited to an investigation or consideration of only matters set forth in the grievance, but shall be permitted to inquire into the professional conduct of the attorney generally. In the event that the Executive Secretary or the commission should consider any charges of misconduct against an attorney not contained in the grievance, the Executive Secretary shall notify the attorney of the additional charges under consideration, and the attorney shall have the opportunity to make a written response to the additional charges under consideration within twenty (20) days after the receipt of such notification.

Any additional charges of misconduct against an attorney, after such notice has been given by the Executive Secretary and the attorney has had an opportunity to reply thereto, may be the subject of a count of any complaint filed against the attorney pursuant to Sections 11 and 12 of this rule.

Section 11. Pre-Hearing Procedures

(a) The members of the Commission shall consider and make a determination of the report and recommendations of the Executive Secretary not later than the meeting following the submission of the report. If the Commission determines that there is not reasonable cause to believe that the respondent is guilty of misconduct the grievance shall be dismissed, and the complainant and the respondent shall be given written notice of the Commission's determination.

(b) If after such consideration, the Commission determines there is a reasonable cause to believe respondent is guilty of misconduct, which would warrant disciplinary action, it shall file with the Clerk a complaint as provided in Section 12 and it shall so report to the Supreme Court, who shall thereupon appoint a hearing officer or officers, not to exceed three [3] in number, who shall be members of the Bar of this Court, none of whom shall be members of the Disciplinary Commission, to hear and determine said charges.

(c) If after such consideration aforesaid, the Commission determines there is reasonable cause to believe respondent is guilty of misconduct which, if proven, would warrant suspension pending prosecution, it shall include a motion to that effect in the aforesaid report to this Court, and this Court shall so advise the hearing officer or officers.

(d) At any time prior to the filing of a complaint with the Clerk, or within thirty (30) days thereafter, the parties (commission and respondent) may conditionally agree upon the discipline to be imposed, in which event they shall jointly submit to the Court Administrator a statement of circumstances which shall contain the proposed charges, the facts agreed to, the facts in dispute, the evidence the parties separately believe would be adduced in a hearing, and the discipline with which the parties are in conditional agreement. Said statement may also contain any other information that the parties deem relevant, other than statements by witnesses attesting to the character or reputation of the respondent, which statements may not be filed.

Upon such submission, the Court will consider the same and (1) enter an order for the discipline conditionally agreed to or (2) submit to the parties a proposed order for such discipline as the Court shall deem appropriate, or (3) notify the parties that it declines to indicate any disposition.

In the event an order is entered as set forth under (1) above, such order shall be a final disposition of the matter. In the event the Court submits a proposed order as set forth under (2) above, and the parties shall desire to agree to such disposition, they shall, within sixty (60) days following the submission of such proposed order, file with the Clerk a complaint, as provided in paragraph (d) of this Section 11 together with a statement of agreement, verified by the respondent and by a member of the commission or the executive secretary thereof. Said statement of agreement shall reflect the prior conditional agreement, the prior action of the Court thereon and the agreement of the parties thereto. Upon such filing, the Court shall

enter its order accordingly, which order shall be a final disposition of the matter. In the event the parties do not desire to agree to such proposed order or in the event the Court proceeds as set forth under (3) above, the parties shall proceed as if no conditional agreement had been filed.

It is the intent of this rule to encourage appropriate agreed dispositions of disciplinary matters. A conditional agreement shall not be admitted into evidence at any hearing of the matter.

Section 12. Prosecution Grievances

(a) In the event the commission determines that the misconduct, if proven, would warrant disciplinary action, the Executive Secretary shall prepare a verified complaint which sets forth the misconduct with which the respondent is charged and shall prosecute the case.

(b) The complaint shall be entitled "In the Matter of," naming the respondent. Six (6) copies shall be filed with this Court. The complaint may be verified on the basis of information and belief.

(c) Upon the filing of such complaint, a copy of the complaint shall be served upon the respondent by delivering a copy of the complaint to him personally or by sending a copy of the complaint by registered or certified mail with return receipt requested and returned showing the receipt of the letter.

In the event the personal service or service by registered or certified mail cannot be obtained upon any respondent attorney, said complaint shall be served on the Clerk of this Court as set forth below.

(d) Each attorney admitted to practice law in this State shall be deemed to have appointed the Clerk of this Court as his or her agent to receive service of any and all papers, processes or notices which may be called for by any provision of this rule. Such papers, process or notice may be served by filing the same with the Clerk of this Court as

the agent for said attorney, together with an affidavit setting forth the facts necessitating this method of service. Upon receipt of such papers, process or notice together with such affidavit, the Clerk of this Court shall immediately mail such papers, process or notice to such attorney at the attorney's address as shown upon the records of the Clerk of this Court, and the Clerk shall make an affidavit showing the mailing of such papers, process or notice to said attorney. Upon the completion of this procedure, said attorney shall be deemed to have been served with such papers, process or notice.

Section 13. Hearing Officers

In addition to the powers and duties set forth in the rule, hearing officers shall have the power and duty to:

(a) Conduct a hearing on a complaint of misconduct within sixty (60) days after the hearing officer is appointed and has qualified;

(b) Administer oaths to witnesses;

(c) Receive evidence and make written findings of fact and recommendations to the Court; and

(d) Do all things necessary and proper to carry out their responsibilities under this rule.

Section 14. Proceedings Before the Hearing Officer

(a) The rules of pleading and practice in civil cases shall not apply. No motion to dismiss or dilatory motions shall be entertained. The case shall be heard on the complaint and an answer which may be filed by the respondent within thirty (30) days after notice of the filing of the complaint. An answer, if filed, may assert any legal defense. If the respondent shall elect to file an answer, he shall file six (6) copies with this Court. An answer need not be filed, in which case the complaint shall be taken as denied. A respondent may on a showing of good cause petition for a change of hearing officer within ten (10) days after the appointment of such hearing officer.

(b) The complainant and the respondent shall be given not less than fifteen (15) days written notice of the hearing date. The respondent shall have the right to attend the hearing in person, to be represented by counsel, to cross-examine the witnesses testifying against him and to produce and require the production of evidence and witnesses in his own behalf at the hearing, as in civil proceedings.

Either the Executive Secretary or the respondent may file with the hearing officer a motion to take depositions or a motion to produce certain documents or records, setting forth the reasons why such depositions should be taken or such records should be produced. The hearing officer may permit the taking of such depositions or may require the production of documents or records under such terms and conditions as he may deem proper. Such terms and conditions shall, as nearly as practicable, follow the Indiana Rules of Civil Procedure pertaining to discovery proceedings.

(c) At the discretion of the hearing officer, or upon the request of either party, a pre-hearing conference may be ordered for the purpose of obtaining admissions, narrowing the issues presented by the pleadings, requiring an exchange of the names and addresses of prospective witnesses and the general nature of their expected testimony, considering the necessity or desirability of amendments to the verified complaint and answer thereto, and such other matters as may aid in the disposition of the action.

(d) The complainant and the respondent shall be given not less than fifteen (15) days written notice of the hearing date. The respondent shall have the right to attend the hearing in person, to be represented by counsel, to cross-examine the witnesses testifying against him and to produce at the hearing and require production of evidence and witnesses in his own behalf at the hearing, as in civil proceedings. All subpoenas or other proceedings and all notices connected with processing of such com-

plaint shall be issued only under the direction of the hearing officer or hearing officers, and no other court or judicial officer of this State shall have jurisdiction to issue any orders or processes in connection with a disciplinary complaint.

(e) The proceedings may be summary in form and shall be without the intervention of a jury and shall be reported.

(f) Within thirty (30) days after the conclusion of the hearing, the hearing officers shall determine whether misconduct has been proven by a preponderance of the evidence and shall submit to the Supreme Court written findings of fact. Recommendations concerning the disposition of the case may be made by the hearing officer in his discretion. A copy of said findings and any recommendations shall be served by the hearing officer on the respondent and the Executive Secretary of the disciplinary commission at the time of filing same with the Supreme Court.

(g) If there has been a determination of reasonable cause as set forth under 11(c), and if the complaint states facts constituting such reasonable cause, the hearing officer or officers may, upon motion of the disciplinary commission, issue a rule against the respondent to show cause why he should not be suspended pending final determination of the cause and fixing a time and place certain for hearing thereon, which shall be not less than fifteen (15) days after service of notice thereof, if by personal service, and not less than twenty (20) days after mailing, if by certified or registered mail. Procedure at the hearing upon such rule to show cause shall be the same as provided herein for hearing upon the complaint and answer, except the burden of proof shall be upon the respondent. If the respondent, in the opinion of the hearing officer or officers shall fail to sustain such burden of proof, the hearing officer or officers shall submit to this Court a written recommendation whether or not the respondent be suspended pending final determination of the cause.

Section 15. Supreme Court Review

(a) The respondent, complainant or Commission shall have thirty [30] days after the filing of the hearing officer's finding and recommendation to petition for a review of the same before the Supreme Court. If no petition for review is filed within thirty [30] days of the finding and recommendation of the hearing officer the Supreme Court shall enter judgment or such other appropriate order in the premises.

(b) Upon receipt of written recommendation for suspension, pending final determination of the cause, this Court may forthwith enter an order of suspension thereon. Respondent shall have fifteen [15] days thereafter to petition this Court for a review and a dissolution of such order.

(c) In the event a party does not concur in a factual finding made by the hearing officer and asserts error in such finding in the petition for review, such party shall file with the petition for review a record of all the evidence before the hearing officer relating to this factual issue. Within thirty (30) days of the filing of the transcript, opposing parties may file such additional transcript as deemed necessary to resolve the factual issue so raised in the petition for review. Any transcript filed must be settled, signed and certified as true and correct by the hearing officer. The fee paid for procuring a transcript or additional transcript shall be included in the costs of the disciplinary proceeding.

(d) The respondent, complainant or Commission may file a brief at the time a petition for review is filed. Opposing parties shall have thirty (30) days from the filing of the petition for review to file a brief. The party filing the petition for review shall then have fifteen (15) days to file a reply brief. The brief filed under the provisions of this rule need not conform to the rules of appellate procedure adopted by this Court.

Section 16. Expenses

The Executive Secretary shall prepare an itemized statement of expenses allocable to each case, including expenses incurred in the course of the investigatory, hearing or review procedures under this Rule. The judgment of this Court imposing such discipline shall also order the respondent to pay such expenses to the Clerk of this Court. Proceedings for the collection of the costs taxed against the respondent may be initiated by the Executive Secretary on the judgment entered.

Section 17. Resignations and Admissions of Misconduct

(a) An attorney who is the subject of an investigation into, or a pending proceeding involving, allegations of misconduct may resign as a member of the bar of this Court, or may consent to discipline, but only by delivering to the Court an affidavit stating that he desires to resign or to consent to discipline and that:

(1) His consent is freely and voluntarily rendered; he is not being subjected to coercion or duress; he is fully aware of the implications of submitting his consent;

(2) He is aware that there is a presently pending investigation into, or proceeding involving, allegations that there exist grounds for his discipline the nature of which he shall specifically set forth;

(3) He acknowledges that the material facts so alleged are true, and

(4) He submits his resignation or consent because he knows that if charges were predicated upon the matters under investigation, or if the proceeding were prosecuted, he could not successfully defend himself.

(b) Upon receipt of the required affidavit, this Court shall enter an order approving the resignation or imposing a disciplinary sanction on consent.

(c) Such order shall be a matter of public record. However, the affidavit required under the provisions of (a) above shall not be publicly disclosed or made available for use in any other proceeding except upon order of this Court.

Section 18. Petitions for Reinstatement

(a) Any person who has been suspended from the practice of law under the provisions of this rule may apply for reinstatement by filing with the Clerk of this Court a petition setting forth that the requirements of Section 4 of this rule have been complied with. Nine (9) copies of such petition shall be filed with the Clerk of this Court, together with a filing fee of $250.00.

Upon the filing of such petition and filing fee, the commission shall schedule a hearing. After such hearing, the commission shall determine whether the petitioner has met the requirements set forth in Section 4 of this rule and may recommend that the Supreme Court enter an order continuing the suspension or reinstating the petitioner as a member of the bar of this Court on such terms and conditions as the Supreme Court may deem proper. The applicant for reinstatement may petition this Court for a review of the recommendation of the commission within thirty (30) days of the entry thereof.

(b) For the purpose of conducting hearings on petitions for reinstatement, the commission may request the appointment of a hearing officer or hearing officers, who may but shall not be required to be members of the commission. Such hearing officers shall have the same powers as the hearing officers provided for in Section 13, and shall hear such petition for reinstatement and make written findings of fact and recommendations to the commission. Following the receipt of the findings and recommendations of the hearing officer or officers, the commission shall make its recommendation to this Court on such petition, as set forth in subsection (a) above.

(c) Any person filing a petition for reinstatement shall be responsible for the payment of any and all costs incurred by the commission in conducting a hearing upon said petition for reinstatement which exceed the amount of the filing fee provided for in subsection (a) above. Any such costs shall be paid by the petitioner within ten (10) days of the receipt of a statement therefor from the commission. In no event will there be any refund or rebate of any part of the filing fee as provided for in subsection (a) above.

Section 19. Assistance of Law Enforcement Agencies

The Commission, or the Executive Secretary, may request any law enforcement agency or office to assist in an investigation. Such assistance shall include the furnishing of all available information about the respondent.

Section 20. Immunity

Each person shall be immune from civil suit for all of his sworn or written statements, made without malice, and intended for transmittal to the Commission, the Executive Secretary, or his staff, or made in the course of investigatory, hearing or review proceedings under this Rule. Sworn or written statements made to others which are not intended for such transmittal have no immunity under this Section. The Executive Secretary, his staff, counsel, investigators, hearing officers, and the Commissioners shall be immune from suit for any conduct arising out of the performance of their duties.

Section 21. Annual Registration Fee

Funds necessary to enable the commission to carry out its functions, obligations and duties under this rule shall be provided as follows:

(a) Except as provided in subsection (b), each attorney who is a member of the bar of this Court on August 1, 1978, and each attorney who is a member on August 1

of each year thereafter, shall so long as he is a member of the bar of this Court, pay a registration fee of $25.00 a year on or before October 1 of such year.

An attorney admitted to practice law in this State on a date subsequent to August 1 of each year shall, within ten (10) days of the date of his or her admission to the bar of the Court, or by October 1 of said year, whichever date is later, pay a registration fee of $25.00. The Clerk of this Court shall furnish to the commission the names and addresses of all persons admitted to practice subsequent to August 1 of each year as said persons are admitted.

(b) No registration fee shall be required of:

(1) An attorney who files with the Clerk, on or before the date the registration fee would otherwise be due, an affidavit that he neither holds judicial office nor is engaged in the practice of law in this State, or

(2) A non-resident attorney who obtains leave of court to participate in a case in association with an attorney whose registration fee for the year has been paid.

(c) On or before August 1, 1975, and the first day of August in each subsequent year, the Clerk of this Court shall mail to each attorney then admitted to the bar of this Court or practicing law in this State, a notice that the registration fee must be paid or an exemption affidavit filed with the Clerk on or before the first day of October. The Clerk shall also send a copy of such notice to each clerk for each circuit and superior court in this State for posting in a prominent place in the courthouse and to the Indiana State Bar Association, the Bobbs-Merrill Publishing Company and the West Publishing Company for publication in their respective magazine and advance sheets. Provided, however, the failure of the Clerk to send such notice shall not mitigate the duty to pay the required fee.

(d) Any attorney who fails to pay the registration fee or file the exemption affidavit referred to in subsections (a) and (b) shall be automatically suspended from the practice of law in this State and shall be subject to the

sanctions for the unauthorized practice of law in the event he thereafter engages in the practice of law in this State. Such an attorney's privilege to practice law may be reinstated upon written application, payment of unpaid registration fees and payment of a delinquent fee computed at the rate of $2.00 for each day of delinquency, not to exceed $40.00.

(e) The Clerk of this Court shall issue a certificate of good standing approved by this Court to an attorney upon receipt of the annual registration fee.

(f) All funds collected by the Clerk of this Court shall be deposited in a special account to be maintained by the Clerk and designated as the Supreme Court Disciplinary Commission fund. Disbursements from the fund shall be made solely upon vouchers signed by the Chief Justice of this Court, unless the Chief Justice shall, by prior order, approve the payment of certain regularly recurring expenses by the Clerk upon the request of the Executive Secretary. All salaries to be paid shall be specifically ordered and approved by this Court.

Section 22. Public Disclosure

(a) After the filing of a complaint by the commission and before the final disposition on such complaint, the commission, the Executive Secretary or the Clerk of this Court may disclose information which does not relate to the merits of the case to members of the public upon written request, and may disclose information concerning final disposition of a complaint to such persons in all cases except those where the sanction of a private censure is imposed. However, written findings of fact and recommendations of hearing officers as required by Section 14(c) of this rule shall be kept confidential until the final judgment of this Court thereon.

(b) Hearings, either before hearing officers or before the commission, shall generally be open to the public. However, hearing officers or the commission may, in the exercise of sound discretion, order a closed hearing on the motion of the hearing officer or commission, or at the request of the respondent if, in the opinion of such hearing officer or the commission, the conduct of a closed hearing is necessary for any of the following purposes:

(1) For the protection of witnesses;

(2) To prevent likely disruption of the proceedings;

(3) For the security of the hearing officer, members of the commission or any of the parties to the proceedings;

(4) For any other good cause shown which in the judgment of the hearing officer or the commission requires such hearing to be closed.

Section 23. Annual Report

The Commission shall make an annual report of its activities to the Supreme Court and the Indiana State Bar Association. The report shall include a statement of income and expenses for the year.

Section 24. Rules of Procedure

The Commission may adopt rules and regulations for the efficient discharge of its power and duties. Such rules and regulations shall become effective upon approval by a majority of this Court.

Section 25. Proceedings to Determine Disability

(a) A member of the commission, a member of the bar of this Court, the Executive Secretary, any individual or any bar association of this State, may at any time file a verified petition with the commission alleging that an attorney is disabled and should be suspended from the practice of law by reason of physical or mental illness or infirmity, or because of the use of or addiction to intoxicants or drugs.

(b) If such petition is filed by a member of the bar of this Court, by any other person or by a bar association, the Executive Secretary shall conduct an investigation of

the facts stated in said petition and make a report with his recommendation to the commission at its next meeting.

(c) If the petition is filed by a member of the commission or the Executive Secretary, or if after the investigation by the Executive Secretary, the commission determines that there is good reason to believe that disability exists which would justify suspension of the attorney named in said petition, the commission shall hold a hearing to determine if said attorney should be suspended because of such disability. For the purpose of conducting such hearing, the commission may request the appointment of a hearing officer or hearing officers as provided in Section 18(b). The commission shall report its findings and recommendations to this Court. The findings and recommendations to this Court may include a written recommendation for suspension pending final determination of the petition, and may also include a recommendation that the Court appoint a member of the bar of this Court to inventory the client file of said attorney and to report to the Court the status of said matters, and this Court may forthwith enter an order of suspension upon such recommendation. The respondent shall have fifteen (15) days thereafter to petition this Court for a review and a dissolution of such order.

(d) If the commission recommends suspension, the respondent attorney shall have thirty (30) days after the filing of the report and recommendations of the commission to petition this Court for a review of the same. If no petition for review is filed within thirty (30) days of the findings and recommendations of the commission, this Court shall enter an order of suspension of said attorney for the duration of such disability.

(e) In the event that this Court grants a petition under this section, briefs may be filed and oral arguments heard, as this Court shall determine. Such briefs need not conform to the rules of this Court. Upon a review, this Court shall determine whether the findings and recommendations of the commission are supported by sufficient evidence, and shall enter its judgment, with or without opinion, as this Court shall determine.

(f) Any attorney suspended for disability as provided in this section shall have the right to petition for reinstatement upon the termination of such disability in accordance with sections 4 and 18 of this rule.

Section 26. Duties of Disbarred or Suspended Attorneys

(a) Duties of disbarred attorneys

(1) In any case where an attorney has been disbarred under the provisions of this rule, said attorney shall promptly notify or cause to be notified by registered or certified mail, return receipt requested, all clients being represented by him in pending matters, of his disbarment and his consequent inability to act as an attorney. Such notice shall advise said clients to seek legal advice of the client's own choice elsewhere.

(2) In addition to notifying clients as set forth above, the attorney who has been disbarred shall move in the Court or agency in which any proceeding is pending for leave to withdraw as such attorney, shall notify all attorneys for adverse parties in such proceedings, and shall furnish the address of the client involved to the Court or agency and to the attorneys for adverse parties.

(3) Any attorney who has been disbarred under the provisions of this rule shall make available to any of his clients, to new counsel for any of said clients or to any other person designated by the Court having appropriate jurisdiction all papers, documents, files or information which may be in his possession.

(4) Within thirty (30) days after the effective date of the disbarment order, the disbarred attorney shall file with this Court an affidavit showing that he has fully complied with the provisions of the order and with these rules and also stating all other State, Federal and Administrative jurisdictions to which he has been admitted to practice. He shall also serve a copy of such affidavit upon the Executive Secretary and shall

set forth the address where communications may thereafter be directed to him.

(5) Proof of compliance with this section of the rule shall be a condition precedent to any petition for reinstatement.

(b) Duties of suspended attorneys.

The suspended attorney shall within twenty (20) days from the date of the notice of his suspension, file with the Court an affidavit showing that:

(1) All pending matters of clients requiring his services during the period of suspension have been placed in the hands and care of an attorney admitted to practice before the Supreme Court of Indiana with the consent of the client.

(2) Clients not consenting to be represented by substitute counsel have been advised to seek the services of counsel of their own choice.

(3) Proof of compliance with this section of the rule shall be a condition precedent to reinstatement.

Section 27. Protection of Clients' Interests

Whenever an attorney has been disbarred or suspended and has not fully complied with the provisions of Section 26 above, or if an attorney has disappeared or died or is otherwise unable to comply with said section, the judge of the circuit court of the county in which said attorney maintained his practice shall, upon proper proof of such facts, appoint an attorney or attorneys to inventory the files of said attorney and take such action as may be appropriate to protect the interests of said attorney and his clients.

Any attorney so appointed shall not disclose any information contained in any such files without the consent of the client to whom such file relates, except as necessary to carry out the order of the court which appointed him.

Amended April 1, 1967; June 23, 1971; July 13, 1971; Nov. 30, 1971; March 15, 1972; March 14, 1973; June 11, 1975; Jan. 31, 1976; Jan. 1, 1977; Jan. 1, 1978.

STATE OF INDIANA
COUNTY OF LAKE—SS:

IN THE LAKE CIRCUIT COURT
CROWN POINT, INDIANA

JOHN BRYANT, JR., et al.,

Plaintiffs,

No. C 71-1384 vs.

LAKE COUNTY TRUST COMPANY, et al.,

Defendants.

FINDINGS OF FACT
[Filed June 24, 1974]

This action came on for hearing before the Court on the 13th, 14th and 20th days of May, 1974, upon the plaintiffs' Motion to Strike Owen W. Crumpacker's appearance on behalf of conflicting parties, to Strike Certain Letters as False and Improper and to Find Owen W. Crumpacker in contempt of Court, which motion was joined in by defendants, Richard Klaas and Lake County Trust Company, an Indiana Corporation in its own right and as Trustee under Trust No. 1653, and the verified objections thereto filed by Martin J. Connelly and Dorothy M. Connelly. Plaintiffs appeared by their attorney, Saul I. Ruman, defendant, Richard Klaas, appeared in person and by his attorney, Kenneth D. Reed, defendant, Lake County Trust Company, appeared by its attorney, Harold Abrahamson, and Martin J. Connelly and Dorothy M. Connelly, appeared in person and by their attorney, Owen W. Crumpacker. Richard Miller, attorney at law and associate of Owen W. Crumpacker, entered his appearance on the last day of the proceedings for and on behalf of Martin J. Connelly and Dorothy M. Connelly. On plaintiffs' Motion, this Court ordered that Richard Miller be joined as an additional respondent to said Petition to Strike, and the allegations and evidence of the parties and arguments of

counsel having been heard and considered, the Court now finds as follows:

1. That attorney Owen W. Crumpacker, of 5217 Hohman Avenue, Hammond, Indiana, has filed, or caused to be filed in this case, a pleading or paper entitled: "MOTION OF MARTIN J. CONNELLY AND DOROTHY M. CONNELLY, both Individually and as Class Representatives of the 2700 Remonstrators Who Signed Remonstrances and Appeared before the Board of County Commissioners of Lake County on May 10, 1971, in Opposition to the Rezoning Petition For Apple Valley Village, and as Citizens, Voters, and Taxpayers, TO VACATE, SET ASIDE AND EXPUNGE THE FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT ENTERED ON SEPTEMBER 25, 1973" seeking, by its terms, as follows:

> "WHEREFORE, Martin J. Connelly and Dorothy M. Connelly, both individually and as class representatives, move that the Findings of Fact, Conclusions of Law, and Judgment entered on September 25, 1973 be vacated, set aside, and expunged as being entered without jurisdiction over the parties and the subject matter and without due process of law."

Said pleading or paper is filed by said attorney on behalf of persons designated by said attorney as: "MARTIN J. CONNELLY AND DOROTHY M. CONNELLY, both Individually and as Class Representatives of the 2700 Remonstrators Who Signed Remonstrances and Appeared before the Board of County Commissioners of Lake County on May 10, 1971 in Opposition to the Rezoning Petition for Apple Valley Village, and as Citizens, Voters, and Taxpayers."

2. That the named plaintiffs in this case are designated as: "JOHN BRYANT, JR., PAUL HOFFMAN and MARTIN HOFFMAN, individually and as Representatives of the class of all similarly situated persons" . . . "owners of real property in the vicinity of the land owned by Lake County Trust as trustee under Trust 1653, as more fully set out below, and are taxpayers and citizens

of Lake County, Indiana; plaintiffs bring this action in their capacities as owners of real estate adversely affected and as taxpayers and as remonstrators against the actions of the Board of County Commissioners of Lake County, and Lake County Plan Commission as is more fully set forth hereafter. Plaintiffs bring this action on behalf of themselves and all property owners and taxpayers in the school district and/or township in which is located the plot of land referred to below.", and are represented by attorney Saul I. Ruman.

3. Defendants Richard Klass and Lake County Trust Co., an Indiana corporation, in its own right and as Trustee under Trust No. 1653 are likewise defendants in a case in the Lake Superior Court (Room 5), Cause No. 573-448, brought by the same attorney, Owen W. Crumpacker, for and on behalf of the same persons, Martin and Dorothy Connelly, by which complaint said attorney and said persons seek as follows:

> "WHEREFORE, plaintiffs pray that upon full hearing, the judgment of the Lake Superior Court, Room Five be set aside, vacated, and held for naught; that any and all further and additional agreements and judgments predicated upon or in ratification of the proceedings in the Lake Superior Court Room Number Five be vacated, set aside, and held for naught; that any and all agreements purportedly made or participated in by John Bryant, Jr., Paul Hoffman, and Martin Hoffman as so-called 'class plaintiffs' and Richard L. Klaas, Lake County Trust Company as Trustee, and Apple Valley Limited, or their counsel, be declared void and be vacated, set aside, and held for naught; that an injunction issue against Dannie's Mobile Homes, Inc., Apple Valley Limited, Dannie M. Devol, John L. Devol, Diversified Contractor's Inc. and Mid-States Engineering Company, Inc. and all persons acting by, through or on behalf of said defendants from proceeding with or improving, in any way, the proposed mobile home park described as 'Apple Valley Village'; that the costs and expenses of preparing and prose-

cuting this action, including attorneys' fees, be determined and assessed against the defendants as costs in the case; and that punitive damages in the amount of five hundred thousand dollars ($500,000) be awarded the plaintiffs and taxed against the defendants; and for all other just and proper relief in the premises."

4. That this cause and said Cause No. 573-448 involves substantially the same subject matter, being the zoning, rezoning and land usage of Richard Klaas' lands for use as a mobile home park, said lands being located at the intersections of Route 2 and Mississippi Streets, West of Highway I-65, in the unincorporated area (Eagle Creek Township) of Lake County, Indiana.

5. That in June, 1971, Richard Klaas, himself, employed said attorney, Owen W. Crumpacker, and his law firm, Crumpacker, Abrahamson & Reed, including Owen W. Crumpacker, Harold Abrahamson, and Kenneth D. Reed, to represent him and protect his interests in the matter of such zoning, rezoning and land usage.

6. That during the period from June, 1971, to December, 1972, said firm and said attorney Owen W. Crumpacker represented and continued to represent Richard Klaas in connection with this and several other lawsuits involving Richard Klaas' same lands and his same interests.

7. That from June, 1971, to December, 1972, Richard Klaas paid attorney fees and costs to said firm, including Owen W. Crumpacker, for representation in said cases (including this case) in the sum of $7,000.00. Said funds were deposited into the Crumpacker, Abrahamson & Reed account at the Calumet National Bank, Hammond, Indiana, and that the incomes of said firm of Crumpacker, Abrahamson & Reed including the abovementioned deposit were distributed to Owen W. Crumpacker, Harold Abrahamson and Kenneth D. Reed pursuant to an agreed percentage. Partnership tax returns for the years in question were filed with the Federal Government and the various cases for which Klaas employed Crumpacker, Abrahamson and

Reed were included on the annual clients' ledger audit prepared shortly after the end of 1971 showing the various debit and credit balances for the various ledgers insofar as they related to "out of pocket" expenses in the various cases.

8. That in early January, 1973, said firm of lawyers ceased associating together in the law practice, and Owen W. Crumpacker remained at 5217 Hohman Avenue, Hammond, Indiana, while Harold Abrahamson and Kenneth D. Reed opened and occupied their separate office.

9. That Richard Klaas elected to have his representation continued by Harold Abrahamson and Kenneth D. Reed, rather than by Owen W. Crumpacker.

10. That immediately following said time, and this dissolution of said firm, the following action has been taken against Richard Klaas by said Owen W. Crumpacker:

(a) On or about February 27, 1973, Owen W. Crumpacker sent a letter to Richard Klaas together with a statement for attorney fees in the amount of $7,000.00 plus out of pocket expenses for legal services rendered through December 31, 1972, in the following cases:

"*Richard Klaas* vs. John Bryant, Jr., Paul Hoffman, and Martin Hoffman, Lake Superior Court, Room Five, Cause No. 571-797

Lake County Trust Company, et al. vs. Board of Commissioners of the County of Lake, et al. Lake Superior Court, Room Five, Cause No. 571-418

John Bryant, Jr., et al. vs. *Lake County Trust Company* et al. Court of Appeals of Indiana, Cause No. 272 A 103

John Bryant, Jr., et al. vs. *Lake County Trust Company, et al.* Lake Circuit Court, Cause No. C 71-1384

John Bryant, Jr., et al. vs. Board of County Commissioners Lake Circuit Court, Cause No. C71-1560

John Bryant, Jr., et al. vs. *Lake County Trust Company, et al.* Court of Appeals of Indiana, Cause No. 472 A 213"

A copy of said letter and statement is attached hereto as Exhibit "A", incorporated herein by reference and made a part of these Findings the same as if set out in full herein. Richard Klaas declined to pay the money demanded.

(b) Then, on or about March 10, or 11, 1973, said Owen W. Crumpacker tendered for filing in the Court of Appeals, Case No. 871A162 (a case in which Richard Klaas was not a party and to which he had no connection) a certain document entitled: "MOTION OF DEFENDANT-APPELLEE JAMES R. DEDELOW FOR REVIEW OF RECORDS FOR FRAUD PRACTICED UPON THE COURTS AND THE TAXPAYERS OF LAKE COUNTY, INDIANA." Said document was not signed by said James R. Dedelow, but rather, was signed and verified by, and only by, said Owen W. Crumpacker. By this document, said Owen W. Crumpacker charged Richard Klaas with various frauds, conspiracies, and assorted misconduct in connection with the very same cases in which Richard Klaas had been represented by said Owen W. Crumpacker and by his firm only a short while before. Shortly thereafter, on motion of said James R. Dedelow, himself, the Court of Appeals found that James R. Dedelow was totally unaware of the preparation, service or filing of the motion by Owen W. Crumpacker; and that James R. Dedelow had never authorized the preparation, service or filing of the motion (all contrary to the Verification of Owen W. Crumpacker), and the Court ordered the motion stricken and expunged from the Court's records as of March 11, 1973.

(c) On or about March 14, 1973, Owen W. Crumpacker wrote a letter to Russell Hopper, 903 - 173rd Place, Hammond, Indiana, 46324 referring to three cases: Dedelow, Inc. vs. Board of County Commissioners and Eibel & Son, Inc., Cause No. 171-872, Eibel & Son, Inc. vs. Dedelow, Inc., Court of Appeals No. 871 A 162 and Lake Superior Court Cause No. 571-418, Lake

County Trust Co., Trustee vs. Board of Commissioners, wherein he stated, among other things, as follows:

> "Dear Mr. Hopper:
>
> "Thank you for your interest in me as your prospective taxpayer's attorney in the above captioned litigation. I will, certainly, give the matter careful consideration.
>
> • • • •
>
> Private papers which Reed, inadvertently, left behind, necessarily, put me on inquiry. I checked into the declaratory judgment suit in the Lake Superior Court, Room No. 5, Cause No. 571-418 in which a decree was entered on August 6, 1971 (when I was vacationing in Colorado) and discovered a violent fraud on the court and the remonstrators in the Lowell area."

(d) Then, on July 26, 1973, said Owen W. Crumpacker filed a complaint (again signed by himself only) against Richard Klaas and Kenneth D. Reed as two of more than 40 defendants. Again, this complaint (Lake Superior Court, Cause No. 573-448) sought to charge Richard Klaas and Kenneth D. Reed with various similar conduct to that previously charged. Again, the complaint referred to and involved the same cases in which said Owen W. Crumpacker and his firm had represented Richard Klaas as aforesaid. The named plaintiffs were Martin J. Connelly and Dorothy M. Connelly.

11. Since June, 1971, and to and including this very day, said Owen W. Crumpacker has had and retains Richard Klaas' records and files delivered, made and kept in connection with said cases and representation, to the exclusion of Richard Klaas.

12. That during the period June 18, 1971, to December, 1972, Richard Klaas was represented by the firm of Crumpacker, Abrahamson and Reed, as aforesaid. On certain occasions, he discussed his legal matters with all mem-

bers of that firm, including Owen W. Crumpacker, Harold Abrahamson and Kenneth D. Reed. On occasion Richard Klaas sat in attorney Owen W. Crumpacker's office and discussed the cases with him and answered all questions asked by said Owen W. Crumpacker, and freely discussed all aspects of the cases with him. Attorney Kenneth D. Reed represented Richard Klaas at all Court hearings held. At no time did Richard Klaas ever authorize, expressly or by implication, said attorney, Owen W. Crumpacker, to engage in the conduct herein described as occurring subsequent to January and February, 1973. At no time did Richard Klaas ever waive the attorney-client privilege between himself and said Owen W. Crumpacker or his said firm.

13. The representation by Owen W. Crumpacker and Richard Miller, on behalf of the Connellys, Martin J. and Dorothy M. Connelly, presents a direct conflict of interest on the part of said attorneys by reason of Owen W. Crumpacker's former attorney-client relationship with Richard Klaas. The conflict on the part of Richard Miller is the result of his association with Owen W. Crumpacker.

14. Attorneys Owen W. Crumpacker and Richard Miller are disqualified from representing the Connellys, Martin J. and Dorothy M. Connelly, or other persons whose interests are adverse to that of Richard Klaas in connection with any matters relating to the zoning, rezoning and land usage of the mobile home park hereinabove referred to.

15. That all actions taken by said attorney Owen W. Crumpacker in this case and in connection with all other cases involving the subject matter of this case in which Richard Klaas and Lake County Trust Company, as Trustee under Trust No. 1653, were parties, were taken by said attorney with full knowledge of his prior representation of said Richard Klaas and said Lake County Trust Company, as Trustee under Trust No. 1653, and in violation of said attorney's fiduciary duty owing to said former clients. That during the period from June, 1971 through December, 1972, there existed by and between said attorney

Owen W. Crumpacker, on the one hand, and said Richard Klaas and Lake County Trust Company, as Trustee, on the other hand, the relationship of attorney and client.

16. That these findings should be filed with the Disciplinary Commission of the Supreme Court of Indiana for appropriate action.

MADE and ENTERED this 24th day of June, 1974.

/s/ James T. Moody, Special Judge

CONCLUSIONS OF LAW

On the basis of the foregoing findings, the Court concludes the law to be as follows:

1. The law is with the petitioners.

2. Attorneys Owen W. Crumpacker and Richard A. Miller are disqualified from representing Martin J. Connelly and Dorothy M. Connelly in these or other proceedings concerning matters involving the zoning, rezoning or land usage involving a mobile home park at or near the intersection of Route 2 and Mississippi Streets, west of I-65, in the unincorporated area of Eagle Creek Township, Lake County, Indiana, by reason of Crumpacker's former attorney-client relationship with Richard Klaas and Richard Miller's current relationship with Owen W. Crumpacker.

3. That during the period from June, 1971 through December of 1972, there existed by and between said attorney Owen W. Crumpacker, on the one hand, and said Richard Klaas and Lake County Trust Company, as Trustee, on the other, the relationship of attorney and client.

4. Petitioners are entitled to the relief sought.

MADE and ENTERED this 24th day of June, 1974.

/s/ James T. Moody, Special Judge

STATE OF INDIANA
COUNTY OF LAKE—SS:

IN THE LAKE CIRCUIT COURT
CROWN POINT, INDIANA

JOHN BRYANT, JR., et al.,

Plaintiffs,

No. C 71-1384 vs.

LAKE COUNTY TRUST COMPANY, et al.,

Defendants.

JUDGMENT, ORDER AND DECREE

[Filed June 24, 1974]

The Court having made its Findings of Fact and Conclusions of Law, it is now Ordered as follows:

1. That the appearances of Owen W. Crumpacker and Richard Miller in this cause be stricken as attorneys for and on behalf of Martin J. Connelly and Dorothy M. Connelly and any members of the class who said Connellys purport to represent as said class representatives, and;

2. That said attorneys, Owen W. Crumpacker and Richard Miller, are precluded from participating in these proceedings or from aiding or counseling other attorneys who may represent the Connellys or members of the alleged class in any matters involving interest adverse to those of Richard Klaas concerning the zoning, rezoning and land usage of the mobile home park hereinabove referred to, and;

3. That a copy of this Court's Findings of Fact, Conclusions of Law, and Judgment, Order and Decree be forwarded to the Disciplinary Commission of the Supreme Court of the State of Indiana for appropriate action.

4. That all pleadings and papers filed by said attorney Owen W. Crumpacker, and or his associate, Richard Miller, on behalf of Martin J. Connelly and/or Dorothy M. Connelly, in this case or in any other case involving Richard Klaas and Lake County Trust Company, as Trustee

under Trust No. 1653, which in any way pertains to the subject matter of this action, be stricken and expunged from the records.

5. That Martin J. Connelly and Dorothy M. Connelly be granted 30 days from the date of this Order to obtain counsel to represent them in this matter.

ALL OF WHICH IS ORDERED, ADJUDGED AND DECREED this 24th DAY OF JUNE, 1974.

/s/ James T. Moody, Special Judge

CERTIFICATE OF SERVICE

I certify that on June 24, 1974, service of a true and complete copy of the above and foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT, ORDER AND DECREE, was made upon each party or attorney of record herein by depositing the same in the United States mail in envelopes properly addressed to each of them and with sufficient first class postage affixed.

/s/ Harriett L. McMillian

EXHIBIT "A"

(Letterhead Of)
CRUMPACKER, ABRAHAMSON & REED

February 27, 1973

Mr. Richard Klaas
P. O. Box 7004
Merrillville, Indiana 46410

Dear Mr. Klaas:

Enclosed is my bill, in duplicate, for legal services rendered and expenses advanced in connection with the following described litigation:

Richard Klaas vs. John Bryant, Jr., Paul Hoffman and Martin Hoffman, Lake Superior Court, Room Five, Cause No. 571-797

Lake County Trust Company, et al vs. Board of Commissioners of the County of Lake, et al, Lake Superior Court, Room Five, Cause No. 571-418

John Bryant, Jr., et al vs. Lake County Trust Company, et al, Court of Appeals of Indiana, Cause No. 272 A 103

John Bryant, Jr., et al vs. Lake County Trust Company, et al, Lake Circuit Court, Cause No. C71-1384

John Bryant, Jr., et al vs. Board of County Commissioners, Lake Circuit Court, Cause No. C71-1560

John Bryant, Jr., et al vs. Lake County Trust Company, et al, Court of Appeals of Indiana, Cause No. 472 A 213

On October 17, 1972, Miss Somerville on instructions from Kenneth D. Reed, issued a statement which included out-of-pocket expenses of $429.93, but which omitted the charges for legal services rendered.

By way of explanation, Reed, along with Abrahamson, and unknown to me had withdrawn approximately $40,000 apiece from the firm commercial account in January and February of 1972. These funds represented, in principal part, fees earned exclusively by me. In lieu of an accounting as requested and in accordance with the memo of understanding attached to the statement, said parties secretly determined to terminate their employment or association with me and this firm and to establish a new account in the Mercantile National Bank for fees due the old firm, but intentionally not billed until after the first of January under their private arrangement.

The existence of a lease with parties by the names of Hess and Gray, 5253 Hohman Avenue was brought to my attention in early December in a conference with Reed. I then put the landlord and his agent on notice that I would hold him liable along with Reed and Abrahamson for losses sustained if they participated in the program hereinabove outlined. Notwithstanding due notice, so I am informed, Gray and Hess accepted rental payments, occupancy, and

the installation of cabinets for the threatened removal of case files from this office.

Fred Donnersberger of the law firm of Wilson, Benne, Feingold & Donnersberger, attorney for Harold Abrahamson and Kenneth D. Reed, has advised me that his clients' employment and/or association with me and this firm was terminated as of *January 1st, 1973*. Under these circumstances, said Abrahamson-Reed have no right to fees and expenses which were earned and/or accrued prior to December 31st, 1972 but which were intentionally not billed. At the entreaty of Mr. Donnersberger and without being fully informed as to the facts, I delivered a portion of the Klaas files to Mr. Donnersberger to enable Reed to get an extension of time for a brief on appeal. Reed, previously, had misled me by false statements that the retainer, and fees previously paid, were to cover all services in the cases to be performed in the future. Reed also stated on another occasion that the cases had been settled through an arrangement with an attorney Saul I. Ruman. One Sherwood Hill, of the Welch law firm in Indianapolis, allegedly, had undertaken the negotiations.

I will expect your prompt remittance in payment of the enclosed bill.

Also, I would like to accomplish the withdrawal of my appearance and the appearance of the firm of Crumpacker, Abrahamson & Reed in your litigation (if it remains unsettled) and to turn over the case files to Fred Donnersberger for further disposition. I will do so on the payment of the enclosed statement. Otherwise, I reserve the right to take appropriate legal action against all parties involved in this scheme.

Yours,

/s/ .....

Owen W. Crumpacker

OWC:cj

Enc.

cc: Fred Donnersberger, Abrahamson & Reed, Stanford Hess, Mr. Gray

Hammond, Indiana
February 27, 1973

Richard Klaas
Lake County Trust Company
P. O. Box 7004
Merrillville, Indiana 46410
In Account With:
Owen W. Crumpacker
Attorney at Law
300 Hammond Building
5217 Hohman Avenue
Hammond, Indiana 46320
(Formerly Crumpacker, Abrahamson & Reed)

The Balance of Legal Services Rendered Through December 31, 1972, in the Following Cases:

Richard Klaas vs. John Bryant, Jr., Paul Hoffman and Martin Hoffman
Lake Superior Court, Room Five, Cause No. 571-797
Lake County Trust Company, et al vs. Board of Commissioners of the County of Lake, et al
I ake Superior Court, Room Five, Cause No. 571-418
John Bryant, Jr., et al vs. *Lake County Trust Company, et al*
Court of Appeals of Indiana, Cause No. 272 A 103
John Bryant, Jr., et al vs. *Lake County Trust Company, et al*
Lake Circuit Court, Cause No. C71-1384
John Bryant, Jr., et al vs. Board of County Commissioners
Lake Circuit Court, Cause No. C71-1560
John Bryant, Jr., et al vs. *Lake County Trust Company, et al*
Court of Appeals of Indiana, Cause No. 472 A 213

Total Fees To Date:	$7,000.00
Out-of-Pocket Expense:	399.01
Xerox Expense:	46.80
Telephone Expense:	32.49
TOTAL STATEMENT:	$7,478.30

STATE OF INDIANA
COUNTY OF LAPORTE—SS:

IN THE LAPORTE CIRCUIT COURT
LAPORTE, INDIANA

STATE OF INDIANA

vs. CAUSE NO. 36721-C

ABE KUSHNER, et al.

ORDER

The Court having been duly advised after a hearing on the Motion for Leave to Withdraw his appearance by Owen Crumpacker as attorney for the defendant landowners and his later Motion to Dismiss that Petition for Leave to Withdraw, now grants the Motion for Leave to Withdraw and denies the Motion to Dismiss said Petition.

The Court finds that the Motion of Owen Crumpacker for Leave to Withdraw his appearance was submitted on November 12, 1974.

That on November 13, 1974, defendant landowners filed their response to said Petition for Leave to Withdraw demanding return of all funds for contingent fees and expenses prepaid to Owen Crumpacker.

A hearing on said Petition was held on December 13, 1974, and continued until January 28, 1975.

On January 27, 1975, Owen Crumpacker entered a Motion to Dismiss his Petition for Leave to Withdraw.

The Motion for Leave to Withdraw his Appearance having been submitted and hearing thereon, and the same having been taken under advisement after argument thereon, the Court having fully considered said matters and being fully and sufficiently advised in the premises, now finds that pursuant to Rule 41 of the Indiana Rules of Trial Procedure the Motion of Owen Crumpacker for Leave to With-

draw his appearance for defendant landowners should be granted.

The Court further finds that Owen Crumpacker's motion for Dismissal of his Motion for Leave to Withdraw his appearance pursuant to Trial Rule 41 should be denied.

The Court further finds that upon granting Owen Crumpacker's Motion for Leave to Withdraw his appearance for defendant landowners, said Owen Crumpacker shall immediately turn over to the defendant landowners all files, papers and other things pertaining to said cause of action.

The Court further finds that the contingent fee heretofore advanced to said Owen Crumpacker prior to final determination of said cause of action should be returned to said defendant landowners.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Owen Crumpacker's Motion to Dismiss his prior Motion for Leave to Withdraw his appearance for the defendant landowners is denied and that his Motion for Leave to Withdraw his appearance in said cause is granted, and his appearance is ordered withdrawn.

It is further ordered that Owen Crumpacker forthwith turn over to the defendant landowners in said cause all files, papers and other things in his possession which pertain to and are a part of said cause of action.

It is further ordered that Owen Crumpacker immediately make an accounting to said defendant landowners of the moneys advanced by said landowners for expenses incurred in the preparation of said cause of action for trial and that he return to said defendant landowners the contingent fee heretofore advanced to said Owen Crumpacker by said defendant landowners.

Dated this 24th day of March, 1975.

/s/ Alban M. Smith
Alban M. Smith, Judge
LaPorte Circuit Court

STATE OF INDIANA
COUNTY OF LAPORTE—SS:

IN THE LAPORTE CIRCUIT COURT
LAPORTE, INDIANA

STATE OF INDIANA

vs. CAUSE NO. 36721-C

ABE KUSHNER, et al.

ORDER

This matter having come on for hearing on the 29th day of April, 1975 before the Hon. Alban M. Smith, regular judge of the LaPorte Circuit Court, and the defendants-petitioners appearing in person and by counsel, and the plaintiff appearing by Deputy Attorney General Robert Hassett and local attorney John Anderton, and the defendant-petitioners having shown the court by the Return of the Sheriff of Lake County, Indiana, that the Rule to Show Cause issued herein, returnable on the 29th day of April, 1975 at 9:30 a.m., was delivered to the respondent Owen Crumpacker on the 15th day of April, 1975, and by reading same to him, which said Return is in the following words and figures, to-wit: (here insert)

And the hour being 11:25 a.m. C.D.S.T., said Owen W. Crumpacker is now three times loudly and audibly called in open court and appears not.

And Petition for Rule to Show Cause submitted, evidence heard, and the court being duly advised in the premises, the court finds that the matters set forth in the petition for Rule to Show Cause are true; that respondent Owen W. Crumpacker has wholly failed to obey the Court's Order of March 24, 1975; that respondent has failed and refused to respond in person to the Rule to Show Cause issued herein on April 9, 1975 by appearing for hearing at the time and place specified in said Rule to Show Cause; that respondent is guilty of wilful disobedience of this

court's Order issued and entered March 24, 1975, and duly served upon him. The court further finds that petitioners are entitled to the relief prayed.

IT IS NOW, THEREFORE, ORDERED, ADJUDGED AND DECREED that respondent Owen W. Crumpacker is in contempt of this court for wilful disobedience to the Order of this court entered March 24, 1975 and for failure to appear at the time and place specified in the Rule to Show Cause entered herein and served on said respondent.

The Sheriffs of LaPorte and Lake Counties, Indiana are ordered to attach the person of said respondent Owen W. Crumpacker and to cause him to be incarcerated in the LaPorte County Jail until he shall purge himself of contempt by complying with and obeying this court's order entered March 24, 1975, which said attachment shall be on and after the 16th day of May, 1975 or as soon thereafter as said attachment may be had, unless said respondent Owen W. Crumpacker shall have first purged himself of contempt by complying with and obeying said Court Order of March 24, 1975, which compliance shall be made to appear by order of this court.

THE CLERK IS ORDERED to issue a copy of this Order to the Sheriff of Lake County, Indiana instanter, to be served upon the respondent Owen W. Crumpacker forthwith.

Dated this 29th day of April, 1975.

/s/ Alban M. Smith
Alban M. Smith, Judge
LaPorte Circuit Court

SHERIFF'S COSTS $6.00

Came to hand this 29th day of April, 1975 I served this writ on the 1st day of May, 1975 on the within named defendant, Owen W. Crumpacker by reading to and within the presence and hearing and by delivering a true copy of the same to him.

LESLIE O. PRUITT, Sheriff
By /s/ ....., Deputy.

IN RE WOODMAR REALTY COMPANY

Cite as 294 F.2d 785 (1961))

In the Matter of the
WOODMAR REALTY COMPANY,
a Corporation, Debtor,

WOODMAR REALTY COMPANY,
a Corporation, Appellant,

v.

Walter A. McLEAN, Trustee and Herschel B. Davis, Trustee's Attorney, Appellees.
No. 13215.

United States Court of Appeals
Seventh Circuit.
June 23, 1961.

As Amended on Denial of Rehearing
Oct. 2, 1961.

Proceedings on petition for removal of bankruptcy trustee and his attorney. The United States District Court for the Northern District of Indiana, Hammond Division, Robert E. Tehan, J., dismissed the petition, and an appeal was taken. The Court of Appeals, Mercer, District Judge, held that the petition was insufficient.

Affirmed.

1. Bankruptcy—132

Petition, alleging perpetration of fraud upon court and requesting removal of bankruptcy trustee and his attorney, was insufficient. Fed.Rules Civ.Proc. rules 8, 9(b), 28 U.S.C.A.

2. Evidence—43(1)

Bankruptcy court was duty bound to take judicial notice of its records and files in cause, and it was duty of reviewing court to take notice of facts which had come to

its knowledge through records presented to it on several appeals in same case.

3. Federal Civil Procedure—1835

It was not necessary to construe motion, to dismiss petition for removal of bankruptcy trustee and his attorney, as admitting all facts alleged, where such alleged facts were shown by record of case to be untrue. Fed.Rules Civ.Proc. rules 8, 9(b), 28 U.S.C.A.

4. Bankruptcy—339

Trustee has no duty to object to every claim filed against bankruptcy estate. Bankr.Act, § 47, sub. a(8), 11 U.S.C.A. § 75, sub. a(8).

5. Bankruptcy—245

Trustee in bankruptcy represents every class of creditors of bankrupt.

6. Bankruptcy—151

Trustee takes same property rights which bankrupt owned.

7. Bankruptcy—205, 274¼

Trustee is charged with duty to discover and honor recorded liens upon property in his hands, and he may be held personally liable for his negligence if he disposes of property in his hands without discovering record fact of existence of valid lien upon property.

8. Attorney and Client—32

Repeated use of ill-founded charges of fraud as trial tactic is foreign to established concepts of honest and ethical advocacy and will not be tolerated.

Benjamin Wham, Chicago, Ill., Owen W. Crumpacker, Hammond, Ind., for appellant.

Gilbert Gruenberg, Gary, Ind., for appellees.

Before KNOCH and CASTLE, Circuit Judges, and MERCER, District Judge.

MERCER, District Judge.

The only issue before us for decision upon this appeal by the bankrupt, Woodmar Realty Company, is whether the court below properly dismissed Woodmar's amended petition for the removal of the appellees, Walter A. McLean and Herschel B. Davis, as trustee in bankruptcy and attorney for the trustee, respectively. For convenience, the parties are hereinafter sometimes referred to as appellant and appellees.

Appellant's amended petition, filed January 7, 1959, charged that appellees had perpetrated, and were perpetrating, a fraud upon the court and Woodmar and requested that appellees be removed by the court as trustee in bankruptcy and as counsel, respectively. Appellees moved to dismiss. After a hearing, the court granted that motion upon its conclusion that "the amended petition is so wanting in merit and so contemptuously violative of the rules of pleading, particularly Rules 8 and 9 of the Federal Rules of Civil Procedure" that it might be summarily dismissed and upon his finding that the amended petition was not filed in good faith.

[1] We have reviewed the record and the amended petition carefully and are convinced that the petition is so wanting in sufficient allegations of fact as to present not even token compliance with the provisions of Rule 9(b) which require a pleader averring fraud to state "with particularity" the circumstances alleged to constitute fraud. F.R.C.P. 9(b), 28 U.S.C.A. This opinion might rest there and the judgment be affirmed without further discussion, were it not for the pervading impression gathered from this record that the removal petition constitutes an attempt by appellant's attorney, Mr. Crumpacker, to harass appellees in the continued performance of their official functions and a near-contemptuous abuse of the processes of a federal court.

For the above reason we think it necessary to analyze the amended petition at some length in the light of the record as it has come to our knowledge. In that endeavor, we rely upon the procedural history of this case as sum-

marized in the opinions upon prior appeals. In re Woodmar Realty Co., 7 Cir., 284 F.2d 815; In re Woodmar Realty Co., 7 Cir., 241 F.2d 768, 64 A.L.R.2d 883. Basically, we hereinafter supplement those summaries, but we have not hesitated to resort to repetition thereof to the extent deemed necessary to demonstrate the propriety of our conclusions which are hereinabove and hereinafter expressed.

The inception of this cause lies in the depression which struck the nation with tornadic force in 1929. In the 1920's, appellant, a corporation, was engaged in the business of subdividing and selling real estate in the City of Hammond, Indiana. Substantial improvements touching various parcels of appellant's lands were made by the City of Hammond and financed by special assessment bonds issued and sold pursuant to the so-called Barrett Law.

By separate lot and parcel, appellant's real estate was impressed with the liens of Barrett Bonds issued on some sixty separate bond rolls. In each instance, appellant in consideration of the privilege of paying the assessment obligation in installments spread over a period of years, executed a statutory waiver of the right to question the legality of assessment and agreement to pay installments as the same became due.

It appears that appellant had been a completely inactive corporation for many years prior to January, 1941, when this cause was commenced. No payments had been made by it on account of the principal and interest of Barrett bond obligations after 1929. Suits had then been commenced in state courts for the foreclosure of Barrett bonds issued upon some fifty rolls affecting appellant's real estate and, as the court below has found, sale of much of the land in foreclosure was imminent.

Against that background, this proceeding was commenced on January 13, 1941, when an involuntary petition was filed on behalf of three bondholders for reorganization of appellant under Chapter X of the Bankruptcy Act. 11 U.S.C.S. § 501 et seq. Appellant's only assets were substantial real estate located in Hammond, which was then encumbered by a lien for state taxes in the sum of $161,-

000.00, by the lien of mortgage bonds in an aggregate sum in excess of $290,000.00, and by the defaulted Barrett bonds which were, respectively, liens upon separate lots, tracts and parcels of the total real estate holdings. In addition, appellant was then indebted to general creditors in the aggregate sum of approximately $14,000.00.

A proposed plan of reorganization was approved by Judge Slick. Barrett bond claims were classified as class 2 claims. With court approval, the tax claim and mortgage claims were compromised and settled for a nominal percentage of the respective amounts thereof. Appellant's real estate was sold free of all liens under court orders providing that all liens would attach to the proceeds of the sales in the hands of the trustee. Such sales continued until early 1951, and were approved by the court upon some fifty separate petitions reporting sales as they were made from time to time.

Also, when the reorganization petition was approved on January 25, 1941, an injunction was issued by the court enjoining creditors and all other persons from enforcing liens against appellant's property, and from prosecuting, or continuing the prosecution of, any suit against appellant in any court for the foreclosure of liens against its property. Pursuant to that injunction, the pending foreclosure suits were dismissed insofar as they related to appellant's real estate.

On December 22, 1952, appellee McLean was appointed successor trustee as a result of circumstances hereinafter related and appellee Davis was retained as attorney for the trustee. Thereafter, on February 16, 1953, after notice and a hearing, Judge Swygert entered an order converting the proceedings into a straight bankruptcy, and ordered that bankruptcy be proceeded with pursuant to Section 236(2) of the Bankruptcy Act. 11 U.S.C.A. § 636(2).

On September 7, 1955, appellee McLean filed his final report as trustee and petitions recommending the allowance of more than 300 class 2 lien claims. By that report, he proposed that substantially all of the funds in his hands be allocated to the payment of those claims. Thereafter,

appellant and some of its stockholders filed objections to a substantial number of the class 2 claims. On March 5, 1956, after a hearing upon motions, filed by the trustee and a number of the class 2 claimants, Judge Swygert entered an order striking appellant's objections. An appeal was taken and we reversed that judgment, holding that appellant, though adjudicated a bankrupt, had standing to object to claims because of the circumstances that disallowance of class 2 claims might result in a surplus of assets for refund to appellant. In re Woodmar Realty Co., 7 Cir., 241 F.2d 768, 64 A.L.R.2d 883.

Before our mandate was filed, Judge Swygert disqualified himself to preside further in the cause because of circumstances which are hereinafter related and the cause was assigned to Judge Parkinson.

Upon the return of our mandate, Judge Parkinson scheduled a pre-trial conference upon all claims and objections thereto. On the day preceding that conference, June 27, 1957, appellant filed a petition for removal of appellees as trustee and as counsel for the trustee. At the pre-trial conference on June 28, Judge Parkinson determined that he would schedule a trial of a representative claim to establish the law of the case with respect to all of appellant's objections. Claim No. 441 was selected for that purpose. At the same time, an order, which we believe to be patently erroneous, was entered directing the trustee and his attorney not to participate in the trial of objections to that claim.[1] Other class 2 claimants were, however, invited to participate. On the same date, a hearing upon appellant's petition for removal of appellees was set for July 17, 1957.

A trial of objections upon claim 441 was held on July 15, 1957, and briefs were ordered. On July 17, the date set

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[1] That order was not appealed, and the propriety thereof was not an issue in the second appeal in which we approved settlement agreements disposing of a number of the pending class 2 claims. However, in his dissenting opinion, Judge Duffy did indicate his disapproval of the order. In re Woodmar Realty Co., 7 Cir., 284 F.2d 815, 821, 822.

for a hearing upon the removal petition, that petition was withdrawn by appellant.

Thereafter, while the issues presented upon the trial of objections were still under advisement, Judge Parkinson was elevated to this court and the case was assigned to his successor, Judge Grant. Judge Grant disqualified himself for personal reasons, and the case was reassigned by Judge Duffy, then Chief Judge of the Seventh Circuit, to Judge Tehan. By stipulation of interested parties, the issues upon the trial of objections were taken by Judge Tehan for decision upon the record made before Judge Parkinson.

In the meantime, on May 19, 1958, counsel for appellant filed a petition for removal of appellees which was almost an exact duplicate of the petition which had been withdrawn by him on July 17, 1957. The petition was answered and set for a hearing. On the date set for that hearing, Judge Tehan, on his own motion, ordered appellant to replead to comply with the requirements of Rule 9(b). Appellant's amended petition was then filed on January 7, 1959.

The amended petition is characterized by a gross lack of any sufficient allegation of fraud as we have hereinabove concluded. In fact, counsel can give arguable credence to this appeal and arguable merit to the amended petition only by *asserting supposed legal principles which are so grossly absurd that we cannot believe they are here honestly asserted.*[*] In the interest of smooth rhetorical transition all of such contentions are not here particularized, but they are subsequently discussed briefly in proper context.

[2, 3] Counsel first contends that we must pretend that the record facts laboriously compiled in the records and files of the court below in more than twenty years of proceedings do not exist and that we may not on this appeal take judicial notice of such facts. It is elementary that the court below was duty bound to take judicial notice of its

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[*] Emphasis supplied unless otherwise noted.

records and files in this cause and that it is our duty to take notice of facts which have come to our knowledge through the records presented to us on the several appeals in this same case. Paridy v. Caterpillar Tractor Co., 7 Cir., 48 F.2d 166, 168; Littleton v. DeLashmutt, 4 Cir., 188 F.2d 973; Fletcher v. Bryan, 4 Cir., 175 F.2d 716; In re Davis Mfg. Co., D.C.D.Kan., 95 F.Supp. 200, 203. However absurd the above contention, it is yet only the minor premise employed to support a hypothesis that appellee's motion to dismiss appellant's amended petition must be construed as admitting all facts alleged, even though such alleged facts are shown by the record of the case to be untrue. That hypothesis is too tenuous to require any comment. See E. g., Interstate Natural Gas Co. v. Southern California Gas Co., 9 Cir., 209 F.2d 380, 384; Fletcher v. Jones, 70 App.D.C. 179, 105 F.2d 58, 61. Since we must take judicial notice of the fact, whenever it be the fact, that the allegations of appellant's amended petition are refuted by the record, we accordingly determine the sufficiency of the allegations of the amended petition in the light of the record of the case as it is known to us.

Both the original petition and the amended petition are summarized in some detail in Judge Tehan's opinion filed October 21, 1960. We adopt that summary as our own, and here employ only such narrative description of the charges of the amended petition as is consistent with an intelligible discussion of the allegations thereof in the light of the record.

If the amended petition has any factual basis whatsoever, it tends to state a charge not against appellees, but only a renewal of charges made at least as early as November, 1952, against the prior trustee, Charles L. Suprise, and other persons. Thus, it is alleged that Suprise, and others, conspired to perpetrate a fraud upon the court and appellant in order to obtain the initial finding of appellant's insolvency, to have themselves appointed as fiduciaries having control of appellant's property and thereafter to dispose of and distribute appellant's property to class 2 claimants to their own benefit and profit.

The amended petition contains not a single allegation connecting either of the appellees with the alleged conspiracy and fraudulent conduct of those persons, except for the record fact that appellee Davis was appointed by the court as co-counsel for Suprise in May, 1950, and served Suprise in that capacity until hearings were commenced in 1951, which ultimately led to the removal of Suprise as trustee. Upon that record fact hangs the tenuous allegation that Mr. Davis became tainted by the alleged fraud of Suprise through that representation and that appellee McLean became likewise tainted through his association with Mr. Davis after Mr. McLean was appointed successor trustee.

In his opinion dismissing the amended petition, Judge Tehan correctly and accurately concluded that such allegations were an *"obvious attempt to establish guilt by association"*, and that the allegations were refuted by facts found and adjudicated in this case. We approve those conclusions without reservation, and resort to the résumé of the procedural history of the case which follows only because we think it necessary to document the *evident fact of gross bad faith which characterizes these allegations.*

When Judge Slick granted the involuntary petition for reorganization of appellant, Suprise was appointed trustee in the reorganization and Carl A. Huebner was appointed as attorney for the trustee. Thereafter, a plan of reorganization was approved by the court and a bondholders committee consisting of owners of special improvement bonds and attorneys for such owners was appointed.

The record made during the first ten years of this proceeding discloses no participation by appellant in the cause after January 25, 1941, when the involuntary petition for reorganization was approved. Appellant's participation on the latter date consisted of the filing of an answer, in which all allegations of the reorganization petition were admitted, including the allegation of appellant's insolvency. During that ten year period, as previously related, the foreclosure suits affecting appellant's property were dismissed pursuant to the injunction issued by Judge Slick, the tax

liens and mortgage liens were compromised and settled and appellant's real estate was sold with court approval, free of the liens of the Barrett Law bonds. The record discloses no objection by appellants at any stage of those proceedings, including the real estate sales.

In the meantime, in 1950, Carl Huebner was convicted in an Indiana court of criminal conduct in conjunction with the foreclosure of Barrett Law bonds. Judge Swygert, who was then presiding in the case, effected Huebner's removal as attorney for Suprise and on May 23, 1950, appointed the appellee and Arnold Huebner, Carl's brother, as co-counsel for the trustee.

An amendment to the plan of reorganization was filed in the early part of 1951, and set for hearing at a meeting of interested persons to be held on April 16, 1951. Also pending at that time were petitions filed by Suprise, Carl Huebner, Arnold Huebner, Mr. Davis, members of the bondholders committee and attorneys for the bondholders committee for the allowance of fees.

On the latter date, appellant filed a petition for the removal of Suprise as trustee, alleging that neither he nor the Huebners were disinterested persons for the reason that Suprise and Carl Huebner were principal owners of Lake Assessment Bonds Service, Inc., a holder and collection agent for a number of the special improvement bonds which were a lien upon appellant's real estate. It was also alleged that S. C. Ennis & Company, selected by Suprise as agent for sale of the real estate, had sold a large part of appellant's real estate to a corporation owned by itself.

At the same time, appellant filed objections to the fee petitions of Suprise and both Huebners upon the ground that each owned, or represented, interests which were adverse to those of both the creditors and stockholders of appellant. Objection was made to the fee petitions of members of the bondholders committee and their attorneys upon the ground that they had employed their positions to effect the purchase of outstanding bonds which were a lien upon appellant's real estate during their tenure as court-appointed fiduciaries.

Appellant's objection to Mr. Davis' petition for fees was predicated upon the alleged fact that Mr. Davis had represented a disqualified trustee and had, in that representation, worked in collaboration with a disqualified co-counsel, Arnold Huebner, and a disqualified bondholders committee. It was also alleged that Mr. Davis had been remiss in his failure to discover and report to the court the activities and conflicting relationships of Suprise and other fiduciaries.

One other petition by appellant, namely a petition requesting the court to find that appellant was not insolvent, was before the court with the petition for removal of Suprise and appellant's objections to the fee petitions.

After extensive hearings had been held in 1951 and 1952, Judge Swygert entered a memorandum order on October 29, 1952, disposing of the above pending petitions and objections. The court found that Suprise and Carl Huebner, as substantial owners of Lake Assessment, held an interest which was materially adverse to the creditors and stockholders of appellant, and concluded that those persons would not have been appointed as trustee and trustee's attorney had that adverse interest been known to the court. The court found, further, that certain sales of real estate by Ennis had not been made at arm's length and that several of the persons acting in a fiduciary capacity in the estate had used their appointment to profit from speculation in Barrett bonds which were liens upon appellant's property. The court concluded, however, that no prejudice to creditors or the stockholders of appellant was revealed by the evidence.[2]

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[2] The methods and practices employed by Huebner and others who were connected with the early proceedings in this case in State court litigation involving Barrett bonds are documented in part in the following cases. In re Huebner, 233 Ind. 363, 118 N.E. 2d 898; In re Harrison, 231 Ind. 665, 109 N.E.2d 722; Harrison v. State, 231 Ind. 147, 106 N.E.2d 912, 32 A.L.R.2d 875; Gardner

(footnote continued on following page)

An order was then entered removing Suprise as trustee, disbanding the bondholders committee, denying the fee petitions of Suprise, the Huebners and certain other of the fiduciaries and directing that statutory notice be given of a hearing to convert the cause to a straight bankruptcy pursuant to Section 236(2).

The fee petition of Mr. Davis and those of certain of the members of the bondholders committee were allowed. In allowing the Davis fee petition, the court found that there was no evidence that Mr. Davis had knowledge of the improper interest and conduct of Suprise and the other fiduciaries or that appellant's attorney had ever called those facts to his attention prior to the hearing upon the petition to remove Suprise.

Finally, by the same opinion, Judge Swygert rejected appellant's petition for a decree of its solvency, holding that appellant was bound by the admission of insolvency made in its answer filed in 1941.

On November 7, 1952, appellant and some of its stockholders filed a motion for a new trial and for amendment of the findings of fact entered October 29, 1952, alleging, in part, as follows: a. That the court had erred in allowing compensation to certain members of the bondholders committee in view of the alleged proof that they had conspired with Suprise and his attorneys to perpetrate a

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v. State, 229 Ind. 368, 97 N.E.2d 921; Gilkison v. Darlington, 123 Ind.App. 28, 106 N.E.2d 473. From those cases it appears that fraud did affect the foreclosure proceedings upon some rolls of bonds issued under the Barrett Law.

In this case, it is a documented fact that extensive hearings were held relative to the activities of Suprise, Huebner and others, after which the court determined that their actions had been in some respects improper, but that those actions had not detrimentally affected appellant's estate and the administration thereof. It is apparent from Judge Swygert's opinion entered October 29, 1952, that he was convinced that no fraud had entered into the early stages of proceedings in this case. Since no appeal was taken from the order entered following that opinion it reasonably appears that appellant's counsel was also convinced that the proceedings had not been affected by fraud.

fraud upon the court and upon appellant; and b. That the court had erred in failing to find that that original reorganization petition had been a part of a conspiracy to perpetrate a fraud upon the court and appellant to obtain a decree of insolvency and to gain control of appellant's assets.

No error was alleged with respect to the allowance of fees to Mr. Davis. That motion was denied on February 10, 1953, and no appeal was taken.

In the meantime, on December 3, 1952, one Samuel H. Cohn was appointed successor trustee. Mr. Cohn died within two weeks thereafter and the appellee, McLean, was appointed successor trustee on December 22, 1952. Appellee, Davis, was retained by the court as attorney for the trustee.

On February 16, 1953, after notice and a hearing, appellant was adjudicated a bankrupt. From the findings of the court entered at that time, it appears that counsel for appellant consented to that adjudication.

Pursuant to authority granted by the court, appellees employed auditors to audit the records of Barrett bonds affecting appellant's property as shown by the books and records of the Treasurer of the City of Hammond. An audit was made, and on the basis thereof appellee McLean filed his final report and petition for allowance of certain class 2 claims on September 7, 1955. By that report he proposed that claims upon special assessment bonds be allowed, and that funds be allocated therefor as follows: a. The sum of $382,989.63 to 310 claims on which the bonds had been produced and checked; b. The sum of $17,705.48 to 43 claims on which the bonds had not been produced and checked; and, c. The sum of $43,436.47 to remaining outstanding bonds and coupons upon the fifty assessment rolls upon which no claims had been filed. It was proposed that the latter two aggregate sums be paid to the Clerk of the Court for the use of bondholders ultimately entitled thereto.

At this point in the case, appellant and some of its stockholders filed their objections to class 2 claims, which led

to the order of March 5, 1956, and the first appeal as hereinabove related. In re Woodmar Realty Co., 7 Cir., 241 F. 2d 768.

On March 20, 1956, appellant filed a motion to vacate the order of November 22, 1941, and the findings of fact and conclusions of law entered October 29, 1952, insofar as it was there adjudicated that appellant was insolvent. That motion alleged that such orders had been procured by fraud; that appellees had been and were suppressing defenses and objections to class 2 claims; and that the motion was timely "because this is the first time that Woodmar and its stockholders have been prejudiced by" the orders of November 22, 1941, and October 29, 1952.

The latter motion was stricken on March 20, 1956, and though the appeal was taken from the order of March 5, 1956, it appears from our opinion in In re Woodmar Realty Company, 7 Cir., 241 F.2d 768, 64 A.L.R.2d 883, that the March 20th order striking appellant's motion to vacate the 1941 order and the 1952 findings and conclusions was not then presented to this Court for review.

The history of events following the issuance of our mandate in the first appeal as hereinabove related, i. e., the selection of claim 441 for trial and the filing and withdrawal of the 1957 removal petition follow in sequence at this point and are pertinent. Finally, the amended petition under review followed.

From the foregoing summary of some pertinent parts of the record facts in this cause emerges *a pattern of conduct which has characterized the actions of counsel for appellant in this case for some ten years.* Whatever may be said of the conduct of Suprise, Huebner and others prior to the hearings in 1951 and 1952, an able trial judge rectified the situation by the 1952 opinion and order. Though appellant expressly requested the court to find that this case had its inception in fraud and that a fraud had been perpetrated upon the court by Suprise and others, no finding of fraud was entered. On the contrary, the court expressed the opinion that the evidence failed to show

that any prejudice resulted from the misconduct then disclosed. The record indicates that appellant and its counsel were then in accord with that conclusion, inasmuch as no appeal was taken from the 1952 decision, and thereafter, appellant, through its counsel, consented to the adjudication of appellant's bankruptcy and to continuation of the cause in bankruptcy pursuant to Section 236(2).

Notwithstanding that apparent accord, counsel has advanced the same charges of fraud in 1956 and 1957. Thereafter, on May 19, 1958, counsel for appellant stated in a pre-trial conference that there were no prior orders of court which he felt should be vacated because of elements of fraud alleged to affect the cause. Contemporaneously with that statement, the fraud charges were renewed by the 1958 petition which, as amended in 1959, is now before the court for review.

If nothing were here involved except the time element, there is a limit to the period of years over which the same dead horse may be beaten. The Suprise era of this case became final when no appeal was taken from the orders entered in 1952 and 1953 rejecting the contention that the adjudication of insolvency was obtained through fraud. The same contention was advanced and rejected in 1956, and no appeal was taken.

There is, however, more involved here than the time element, namely, *a vituperous tendency of counsel to read some heinous motive into the acts of anyone who dares to oppose him and of every judge who rules adversely to him.* The record certainly supports the inference drawn in appellee's brief that the 1957 petition, which was withdrawn, was a warning to appellees to not interfere in the plans of appellant's counsel, and that the 1958 petition followed when that warning was not heeded. In that respect, we note that the 1957 petition was filed on the eve of the commencement of litigation upon appellant's objections to class 2 claims, that it was withdrawn shortly after the order of court which neutralized the trustee and his counsel insofar as the trial of the test case was concerned and within two days after the trial of the test case

had been completed and that the 1958 petition was filed a mere matter of days prior to appellant's filing of settlement agreements which were the subject of the second appeal. In re Woodmar Realty Co., 7 Cir., 284 F.2d 815. We think that fact of timing is significant, and it is certainly consistent with the pattern which the record reveals of *charging both the dead and the living with fraud whenever an adverse ruling is contemplated or becomes a reality.*

Although formal charges are confined to the trustee and his counsel, appellant's brief reveals that the *trial judges are not immune from similar attack. We abhor the insinuations that every trial judge, except the late Judge Parkinson, who has been burdered by this case since 1951, is either a blundering idiot, or, impliedly, a tool of some heinous scheme.* Those insinuations cannot be justified by anything which appears of record. Moreover, they are apparently motivated by the same *lack of honesty which is apparent in the circumstances surrounding Judge Swygert's order disqualifying himself.*[3]

Before leaving this phase of the case, we remark the ridiculous assertion that the fact that appellees propose to distribute substantial sums to class 2 claimants reveals a purpose to carry out a scheme devised by Suprise who

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3 Prior to his appointment to the District Court, Judge Swygert was a member of a law firm which had filed a class suit to forever close Barrett bonds upon one roll which included bonds which were a lien upon a part of appellant's real estate. He apprised all parties to this case of that fact shortly after the case was assigned to him, and he was then assured by Mr. Crumpacker, as attorney for appellant, that that fact constituted no reason for his disqualification. Notwithstanding that assurance, that fact was alleged by Mr. Crumpacker as the predicative basis for a motion asking Judge Swygert to disqualify himself, which motion was filed some five years later and shortly following the entry of the order of March 5, 1956, striking appellant's objections to class 2 claims. Although Judge Swygert denied that motion, he did, as related in the text of this opinion, thereafter disqualify himself upon his own motion and assign the case to Judge Parkinson.

proposed a similar distribution of assets in 1951. More must be said of this later, but the fact remains that Mr. McLean, as trustee, represents the creditors of appellant and his recommendations, though yet neither rejected nor approved by the court below, appear on the surface to be a conscientious effort to recommend the allowance of claims which he believes to be valid.

The guilt by association allegations are followed by general allegations that appellees did not file objections to all of the class 2 claims, that they sought to suppress defenses to those claims by filing the trustee's final report in 1955 proposing the distribution of a substantial part of the funds in the hands of the trustee in satisfaction thereof and that appellees sought to prevent appellant from protecting the estate against those lien claims by moving to strike appellant's objections thereto. It is contended that each of those allegations supports appellant's conclusions that appellees are continuing a fraudulent scheme which began with Suprise, et al.

[4] At the outset we reject the frivolous assertion of supposed legal principle that it is the duty of a trustee in bankruptcy to object to every claim filed against the estate which he represents. The Act enjoins a trustee in bankruptcy to examine all claims and "object to the allowance of such claims as may be improper." 11 U.S.C.A. § 75, sub. a(8). Actually, counsel apparently concedes that the duty to object, generally, attaches only with respect to claims which the trustee deems invalid, but he argues that objections must be made here because the claims are based upon liens of special improvement bonds which are said to be the obligations of the City of Hammond, not of appellant.

[5-7] That asserted exception is a complete misconception in at least two respects. The obligation of these bonds became the personal obligations of appellant upon its execution of the installment-payment waiver and agreement. Feder v. Gary State Bank, 98 Ind.App. 513, 186 N.E. 379; Central Bldg. & Loan Ass'n v. Gary State Bank, Ind.App., 186 N.E. 382; Larimer v. Gary State Bank, Ind. App., 186 N.E. 384; La Plante v. Englehart's Estate, Ind.

App., 186 N.E. 385. Of greater significance, a trustee in bankruptcy represents every class of creditors of the bankrupt. He takes the same property rights which the bankrupt owned and he is charged with a duty to discover and honor recorded liens upon the property in his hands, In re Wakey, 7 Cir., 50 F.2d 869, 75 A.L.R. 1521; New York-Brooklyn Fuel Corp. v. Fuller, 2 Cir., 11 F.2d 802, and he may be held personally liable for his negligence if he disposes of property in his hands without discovering the record fact of the existence of a valid lien upon that property. In re Prather, D.C.S.D.Ill., 138 F.Supp. 433; Grodsky v. Sipe, D.C.E.D. Ill., 36 F.Supp. 244. Filing of objections without legal basis therefor is never required.

The general allegation, actually an insinuation, that appellees did not file objections to class 2 claims is simply partly untrue in the light of record facts. Of the some 340 claims filed in the reorganization and the some 202 claims filed in bankruptcy after February, 1953, appellees obtained the disallowance of 142 class 2 claims as barred by the statute of limitations, or as duplicated claims, and the partial disallowance of 24 additional claims filed by former fiduciaries. Appellees recommended the allowance of the balance of the class 2 claims upon their reported determination that each was a valid and subsisting lien upon the funds in the hands of the trustee and not subject to any legal defense. We express no opinion as to the merit of the trustee's final report from which the latter recitals of fact are taken since that report has not been acted upon by the court below. Appellant, however, does not contradict the recited fact that a number of class 2 claims were resisted and disallowed, and the report stands of record as a refutation of the allegation that appellees objected to no class 2 claims.

What is said above applies with equal force to the general allegations that appellees sought to suppress defenses to class 2 claims by recommending their allowance and by resisting appellant's efforts to object to such claims. The trustee's final report, which is yet pending, recites appellee's determination that no valid defenses could be made to the lien claims which he recommended for payment. The lower court's indicated decision of the test case upon claim 441, which is now of record, suggests that Judge Tehan agrees with appellees that the objections to those claims which appellant asserts are without merit. We express no opinion upon that point, since that decision is not before us on review. We note the indicated decision only for its tendency to illustrate the gross absurdity of the contention that the machinations of some nefarious plot led to the trustee's recommendation that certain of the class 2 claims be allowed.

The *attempt to inject some sinister connotation into appellee's attempts to foreclose appellant's claim of right to object to the improvement bond claims, is ridiculously frivolous.* Judge Swygert sustained the motions by appellee, McLean, and others to strike appellant's objections, and Judge Finnegan, of this court, dissented from our decision reversing the judgment striking appellant's objections. The point is, if some sinister connotation must be attached to appellee's act in preparing and filing the trustee's motion to strike, the "sinister" view which prompted that act was shared by two very able jurists who believed that the trustee's motion to strike was well founded in law.

Further specific analysis of statements contained in the removal petition could serve no purpose. We find nothing of substance in any factual averment, but a wealth of conclusionary statements which lead invariably to *counsel's vitriolic conclusions that appellees, who dare to oppose him, are guilty of heinous misdeeds.*

We do note that counsel's statement that the 1958 petition and the amended petition were filed at the suggestion and direction of Judge Tehan is shown of record to be untrue. We approve the concluding paragraph of Judge Tehan's opinion, as follows, as a summary of the record in that respect:

> "My own personal experience convinces me that there exists *a complete lack of good faith.* I was appointed in this case in late December, 1957, and held

a few days of pre-trials in January, 1958. At that time and subsequently, petitioner's counsel repeatedly and persistently *made charges of fraud against practically all persons who were in any sense adverse to him.* I cautioned him and then finally admonished him that I would no longer tolerate *these unlawyerlike, abusive charges against fellow attorneys, who were the objects of his charges.* In so doing I did advert to the elementary fact that there was a method and remedy, if he had a proper claim. It was only then, some ten months after he had withdrawn his charges that he refiled them. This period, from July of 1957 to May 19, 1958, is certainly a substantial period for a person professing to believe that a fraud is being perpetrated upon the court and his client, to withhold action. His assertion of these grave charges, withdrawal of it, reinstatement of it have more the aroma of a pressure tactic than a sincere and righteous concern."

[8] Because we are convinced that the record in this case *presents a contemptible, if not contemptuous, abuse of the legal processes of a feleral court,* we have dwelt at length upon a historical résumé of the record facts as they have come to our attention. We did that advisedly in order that there may be no mistake that we are cognizant of the nature and severity of the question with which we deal. *We find a sordid picture of the repeated use of ill-founded charges of fraud as a trial tactic which is foreign to established concepts of honest and ethical advocacy.* We want it clearly understood that repetition of that practice as disclosed by this record will not be tolerated in the future.

Appellee's motion to file a supplemental brief was taken under advisement upon oral argument of this appeal. That motion is granted and the Clerk is directed to file the supplemental brief which was tendered to the court with that motion.

The judgment is affirmed.

IN RE CRUMPACKER

Cite as 130 N.E.2d 775

In re Owen W. CRUMPACKER.
Clarence H. Harney, Hammond, Indiana,
Relator-Appellant.
No. 29285.

Supreme Court of Indiana.
Dec. 22, 1955.

Action commenced by filing of "An information and motion to disbar". The Circuit Court, Newton County, Newell A. Lamb, J., entered judgment against relator, and he appealed. The Supreme Court, Bobbitt, C. J., held that it could not be said that trial court, in entering judgment against relator, had denied him relief to which he was entitled under the evidence.

Affirmed.

1. Attorney and Client—57

Where petition to consider as an original information in Supreme Court the record filed in appeal from judgment for respondent in proceeding commenced by filing of "An information and motion to disbar" failed to comply with Supreme Court rule pertaining to disciplinary proceedings, it was dismissed. Supreme Court Rules, rule 3-21; Burns' Ann.St. § 4-3614.

2. Attorney and Client—36(1)

Circuit and superior courts have jurisdiction concurrent with Supreme Court in disbarment proceedings brought in conformity with statute. Burns' Ann.St. § 4-3614.

3. Attorney and Client—53(2), 57

In action commenced by filing of "An information and motion to disbar", burden was upon relator to establish allegations of his information by preponderance of evidence, and decision against him could not be attacked upon

ground that evidence was insufficient to sustain it; but relator could properly assert on appeal that decision of trial court denied him relief to which he was entitled under evidence and hence was contrary to law. Burns' Ann. St. § 4-3614.

4. Attorney and Client—57

In determining whether decision of trial court, in action commenced by filing of "An information and motion to disbar", had denied relator the relief to which he was entitled under evidence and hence was contrary to law, Supreme Court would consider only evidence most favorable to respondent, together with any reasonable inferences which would be drawn therefrom, and only if the evidence was without conflict and could lead to but one conclusion, and trial court had reached opposite conclusion, could decision of trial court be set aside as contrary to law. Burns' Ann.St. § 4-3614.

5. Attorney and Client—53(2)

In action commenced by filing of "an information and motion to disbar", it could not be said that trial court, in entering judgment against relator, had denied him relief to which he was entitled under evidence. Burns' Ann.St. § 4-3614.

George E. Hershman, Crown Point, Straley Thorpe, James J. Richards, Hammond, for appellant.

Owen W. Crumpacker, Hammond, pro se, J. Edward Barce, Kentland, for appellee.

BOBBITT, Chief Justice.

This action was commenced by the filing of "An Information and Motion to Disbar" in the Lake Superior Court under Acts 1937, ch. 88, § 2, p. 452, being § 4-3614, Burns' 1946 Replacement.

The issues were closed by the filing of a verified answer by respondent. Upon change of venue to the Newton Cir-

cuit Court, trial was had by the court which found for the respondent-appellee, Crumpacker, and entered judgment against relator-appellant accordingly.

[1] *First*: We are confronted at the outset by a petition to consider the record filed in this appeal as an original information in this court and that the petition be considered as supplemental thereto.

Rule 3-21 of the Supreme Court, 1954 Edition, pertaining to disciplinary proceedings is as follows:

> "Original actions to disbar, suspend, or otherwise discipline members of the bar of this state may be instituted in this court by the Attorney General of Indiana, or a commission of members of the bar of this court to be appointed annually by this court, without leave. No other person may commence such a proceeding without leave of court first had and obtained, and the clerk is directed not to permit such proceedings to be filed, except by the Attorney General or said commission, until such leave has been granted."

The petition here was not filed by the Attorney General or the Disciplinary Commission appointed by this court. Neither was leave obtained by relator-appellant for its filing. Because the petition in no manner complies with the provisions of Rule 3-21, *supra,* it is dismissed.

Second: Having disposed of the petition mentioned above, we will now consider the questions presented by the record on appeal.

[2] Circuit and superior courts have jurisdiction concurrent with this court in disbarment proceedings brought in conformity with the provisions of § 4-3614, supra. Beamer v. Waddell, 1943, 221 Ind. 232, 45 N.E.2d 1020; In re Harrison, 1953, 231 Ind. 665, 109 N.E.2d 722.

The grounds relied upon for reversal are: (1) That the decision and findings of the court are not supported by sufficient evidence; and (2) The decision and findings of the court are contrary to law.

[3, 4] The burden was upon relator, Harney, to establish the allegations of his information by a preponderance of the evidence, In re Filipiak, 1953, 232 Ind. 414, 417, 113 N.E.2d 282; and a decision against him cannot be attacked upon the ground that the evidence is insufficient to sustain it. Pokraka v. Lummus Co., 1952, 230 Ind. 523, 528, 104 N.E.2d 669.

Relator-appellant may properly assert that the decision of the trial court denied him the relief to which he was entitled under the evidence and hence is contrary to law. Pokraka v. Lummus Co., supra. To determine this question, however, we will consider only the evidence most favorable to respondent-appellee, together with any reasonable inferences which may be drawn therefrom; and it is only where the evidence is without conflict and can lead to but one conclusion, and the trial court has reached an opposite conclusion, that the decision of the trial court will be set aside on the ground that it is contrary to law. Pokraka v. Lummus Co., supra.

[5] The evidence in the record before us—which we deem unnecessary to set out or summarize—is conflicting upon the only issue presented. From a careful examination of this record we cannot say that relator-appellant was denied the relief to which he was entitled. Hence, the decision of the trial court was not contrary to law and must be affirmed.

Judgment affirmed.

LANDIS, ARTERBURN, ACHOR and EMMERT, JJ., concur.

MANCUSO v. INDIANA HARBOR BELT R. R.

Cite as 568 F.2d 553 (1978)

Joseph MANCUSO, Plaintiff-Appellee,

v.

INDIANA HARBOR BELT RAILROAD, Defendant.

Appeal of Owen W. CRUMPACKER.
No. 77-1466.

United States Court of Appeals,
Seventh Circuit.
Jan. 20, 1978.

Rehearing In Banc Denied
March 1, 1978.

An attorney filed a notice of appeal from an order entered by the United States District Court for the Northern District of Indiana, Hammond Division, Jesse E. Eschbach, Chief Judge, requiring him to show cause why he should not be suspended from the practice of law. The Court of Appeals held that the order was not final for purposes of appeal.

Appeal dismissed.

1. Federal Courts—585

Trial court's action in ordering attorney to show cause why he should not be suspended from practice of law before such court was not final order for purposes of appeal. 18 U.S.C.A. § 401(3).

2. Federal Civil Procedure—2747

Attorney's appeal from order of trial court requiring him to show cause why he should not be suspended from practice of law was frivolous, taken for delay, and im-

posed an unnecessary burden on Court of Appeals and appellee; damages and double costs would therefor be assessed. 18 U.S.C.A. § 401(3); Fed.Rules App.Proc. rules 2, 38, 28 U.S.C.A.

Owen W. Crumpacker, Hammond, Ind., for appellant.

Saul I. Ruman, Hammond, Ind., for plaintiff-appellee.

Before FAIRCHILD, Chief Judge, and PELL and BAUER, Circuit Judges.

PER CURIAM.

Owen W. Crumpacker filed a notice of appeal from an order entered February 22, 1977 in the District Court for the Northern District of Indiana. The record has been docketed in this court and briefs submitted by Appellant Crumpacker and counsel for Appellee Mancuso. Appellee's brief contends, in part, that the appeal should be dismissed (1) because of appellant's failure to prepare his brief in compliance with the rules and (2) because the order appealed from is not a final appealable order.

[1] The order appealed from was entered February 22, 1977 upon a motion of plaintiff to bar Appellant Crumpacker from practicing in the district court until certain costs of appeal (allowed in the decision of an earlier appeal) are paid. After describing the motion and summarizing certain activity of appellant in connection with the above entitled case, both in the district court and the court of appeals, the order provided:

> Accordingly, Owen W. Crumpacker is ordered to show cause, if any he has, on or before March 10, 1977 as to why he should not be suspended from the practice of law in this court. In the event that such costs are paid by or before March 10, 1977, then this order will be deemed to be discharged. Otherwise, it shall remain in full force and effect. In the event such costs are not paid, the showing of Owen W. Crumpacker shall be in writing. In the event that said showing shall be inadequate in the opinion of this court, a further hearing will be held, at which time Owen W. Crumpacker will be required to show cause as to why he should not be permanently barred from the practice of law in the United States District Court for the Northern District of Indiana.

It is crystal clear that the order is not a final order. It is equally clear that an attorney with the length of experience of appellant must have known it was not a final order. The record on appeal, returned pursuant to appellant's designation, consists in large part of returns to the order to show cause and various other motions and objections filed by appellant on various dates *after* the date of the order appealed from. The only document in the record filed before the date of the order appealed from was the motion of plaintiff which was the predicate for the order to show cause, appealed from. Moreover, on March 1, 1977, three weeks before the filing of the notice of appeal, the district court entered an order reciting appellant's filing in the Supreme Court of a petition for certiorari to review a related judgment of this court, and, on that account continuing without date the order appealed from, directing appellant to show cause on or before March 10, 1977.

In a vain attempt to characterize the order appealed from as final, appellant's notice of appeal described the order as "finding defendant guilty of alleged misconduct."

Compounding that attempt, appellant, on page 7 of his brief, paraphrased a part of the order as "By way of punishment, defendant was ordered to pay $545.60 in costs taxed in favor of 'Joseph Mancuso, plaintiff-appellee' by the Court of Appeals or be permanently barred from the practice of law in the United States District Court for the Northern District of Indiana."

Further, on page 25 of his brief, appellant described the order as follows: "Judge Eschbach took cognizance of defendant's failure to pay the 'Bill of Costs' in the amount

of $545.60, found *defendant guilty of misconduct under Title 18 U.S.C. § 401(3) and, in addition to entering a fine in the amount of the 'Bill of Costs,' sentenced him to be permanently disbarred.*" We have italicized a portion of the description which is clearly a misrepresentation.

Much of the material in appellant's fifty-page brief would have been wholly irrelevant to the appeal if the order were appealable, or even if it had disbarred appellant as falsely characterized.

Accordingly, this court finds:

(1) That the order appealed from is not final, nor otherwise appealable, and the appeal must be dismissed.

[2] (2) That the appeal was frivolous, taken for delay, and imposed an unnecessary burden on this court and on appellee, and that appellant must have so known. The matter is clear from the record and briefs, and, pursuant to Rule 2, F.R.A.P., the matter is decided without argument.

(3) That it is appropriate, pursuant to Rule 38, F.R.A.P., to award just damages and double costs to appellee.

(4) That appellee's damages, at a minimum, are a reasonable attorney's fee for the preparation of appellee's brief, and that, at a minimum, such attorney's fee is determined at $350.

And IT IS ORDERED,

That the Clerk of this court enter judgment dismissing the appeal, awarding double costs in favor of appellee and against appellant, and awarding recovery by appellee from appellant of $350 damages.

Respectfully submitted,

SAUL I. RUMAN
Attorney at Law
5261 Hohman Avenue
Hammond, Indiana 46320
Respondent Pro Se